



STATE AUDITOR'S OFFICE

THE COMMONWEALTH
OF MASSACHUSETTS

MASS.

SAI.2:

S29/4/
984/85



312066 0278 0980 9

NO. 86-2005-3

STATE AUDITOR'S REPORT ON THE USE OF
"O3" CONSULTANTS IN THE EXECUTIVE OFFICE
OF TRANSPORTATION AND CONSTRUCTION,
DEPARTMENTS OF PUBLIC WORKS, PUBLIC
HEALTH, AND ENVIRONMENTAL QUALITY
ENGINEERING, AND MASSPORT
JULY 1, 1984 TO JUNE 30, 1985

JOHN J. FINNEGAN,
AUDITOR

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS
02108

NO. 86-2005-3

STATE AUDITOR'S REPORT ON THE USE OF
"03" CONSULTANTS IN THE EXECUTIVE OFFICE
OF TRANSPORTATION AND CONSTRUCTION,
DEPARTMENTS OF PUBLIC WORKS, PUBLIC
HEALTH, AND ENVIRONMENTAL QUALITY
ENGINEERING, AND MASSPORT
JULY 1, 1984 TO JUNE 30, 1985

GOVERNMENT DOCUMENT
C-115 2108
[REDACTED] *JUN 15 87
UNIVERSITY MICROFILMS
DEPOSITORY COPY

OFFICIAL AUDIT REPORT

DEC - 9 1986

ISSUED BY THE
Department of the State Auditor

1871

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
OBJECTIVES, SCOPE, AND METHODOLOGY	7
LEGISLATIVE HISTORY	9
EXPLANATION OF FINDINGS AND DEFICIENCIES	13
1. <u>"03" Consultants Used as De Facto State Employees:</u> Certain statutes as well as certain administrative regulations promulgated by the Executive Office for Administration and Finance (EOAF), have been established in order to control "03" consultant activities. The legislative intent of these laws and regulations is to create a formal distinction between "03" consultants and regular ("01" and "02") state employees. However, state agencies have been using consultants as if they were regular state employees.	13
A. <u>Consultants Performed Ongoing Agency Functions:</u> Our audit disclosed that three state agencies (the departments of Environmental Quality Engineering, Public Health, and Public Works) employed "03" consultants to perform routine services--services that were, or are also being, performed by regular state employees.	16
B. <u>Consultants Employed for Prolonged Periods:</u> Although we believe that the Legislature clearly intended "03" services to be temporary (EOAF, in accordance with legislative intent, has defined "temporary" to mean "not exceeding one year)," our audit identified 108 individuals who were employed at DPH and DEQE under consultant contracts on a full-time continuous basis for periods ranging from 13 months to 9 years.	24
C. <u>Consultants Directly or Indirectly Supervised State Employees:</u> Under state law, supervisory responsibilities are to be carried out by regular state employees and not by "03" consultants. Based on our review, we believe that during fiscal year 1985, 14 consultants under contract with DPH and DEQE supervised state employees.	27

2. Deficiencies in the Selection and Procurement of Consultants: 30
Under existing regulations and controls, state agencies have been allowed to procure consultant services without adequately considering cost. Our audit disclosed that certain uneconomical practices have resulted in three agencies' spending as much as \$2.4 million unnecessarily.
- A. Failure To Select Lowest Qualified Bidder for Emergency-Response Contract: 33
DEQE did not select the lowest qualified bidder for its statewide emergency-response contract. As a result, DEQE wasted as much as \$1.2 million of state monies.
- B. Failure To Select Lowest Qualified Bidder for Air-Monitoring Services: 43
DEQE rated two consulting firms technically competent, yet awarded an air-quality-monitoring contract to the firm submitting the higher bid. As a result, DEQE spent at least \$21,500 more than was necessary.
- C. Non-Competitive Procurement Practices: 47
EOAF has allowed DPW to purchase most of DPW's consultant services on a non-competitive basis. In our opinion, the DPW procurement process could be improved by negotiating with more than one consultant and by introducing the element of price-competition.
- D. Massport's Inefficient and Uneconomical Management of the State Transportation Building: 53
EOAF's Division of Capital Planning and Operations (DCPO) delegated its responsibility to manage the State Transportation Building to the Massachusetts Port Authority (Massport) by non-competitively awarding Massport a \$2.5 million "03" consultant contract. We believe that the Commonwealth may have realized a cost savings of approximately \$1.2 million if DCPO had directly managed the building.
- E. Failure To Follow Competitive-Bid Procedures: 71
During fiscal year 1985, DPH and DEQE awarded 16 contracts totalling \$3.5 million without following competitive-bid procedures.
3. DEQE's Uneconomical Use of a Consultant as a Fiscal Conduit: 75
During the period July 1, 1983 through December 31, 1985, DEQE awarded, on a non-competitive basis, 26 "03" contracts, totalling approximately \$3.2 million, to the New England Interstate Water Pollution Control Commission (NEIWPCC). As of December 31, 1985, DEQE had expended approximately \$1.8 million. In our opinion, DEQE used NEIWPCC to hire additional state employees personnel who received excessive compensation. As a result of these uneconomical practices, DEQE had expended, as of December 31, 1985, approximately \$386,000 unnecessarily.

4. <u>Inadequate Contract Management by Two State Agencies:</u> Because both DPW and EOTC inadequately developed and managed contracts with two consultants, certain questionable costs were incurred. In addition, one of the consultants was paid for days when he was out of state on unrelated business. The other consultant was paid at an excessive hourly rate.	81
5. <u>Massport's Non-Compliance with Internal Policies Regarding Consultants:</u> Contrary to its own internal policies, Massport allowed consultants working under nine contracts, totalling \$1.1 million, to begin work without fully executed contracts. In our opinion, Massport assumed unnecessary liabilities, and could not effectively evaluate the performance of its consultants.	97
CONCLUSION	100
EXHIBITS	103
I. Chapter 29, Section 29A, of the Massachusetts General Laws	103
II. House Bill 123	104
III. Massport's Janitorial Services	107
IV. Massport's Security Services	110
V. Massport's Window-Cleaning Services	113
VI. <u>Administrative Bulletin 82-1, Section 4.11</u>	115
AGENCY HEADS	116



INTRODUCTION

In accordance with Chapter 29, Section 27, of the Massachusetts General Laws, as amended, the legislative Joint Committee on Ways and Means established the "03" subsidiary account so that the Commonwealth could obtain and pay for professional and non-professional consultant services that regular (i.e., "01" and "02") state employees could not provide or were not available to provide. The use of consultants by state agencies has increased over the years; and, accordingly, the cost of obtaining "03" consultant services has risen, from \$126 million in fiscal year 1975 to approximately \$384 million in fiscal year 1985--a 200 percent increase during this ten-year period. During the same period, total "01" and "02" expenditures rose 122 percent. We could not determine the total number of consultants employed during any of these fiscal years because a master listing of consultants does not exist.

Various statutes and regulations control the purchase of "03" consultant services. Chapter 29, Section 29A, of the General Laws, as amended, establishes certain requirements for the procurement and use of "03" consultants. Chapter 29, for example, prohibits consultants from directly or indirectly supervising state employees. Additional guidelines are contained in the Expenditure Code Manual, which requires that an "03" consultant's service

1. Must be for a limited specified period of time.
2. Must be a service which permanent state employees ordinarily do not render or are not currently available to render.

Chapter 29 also authorizes the Commissioner of Administration within the Executive Office for Administration and Finance (EOAF) to establish rules and regulations for the proper administration of the "03" system. Administrative Bulletin 82-1 establishes the principal requirements by which EOAF manages the

"03" system. Guidelines for the procurement and compensation of consultants are contained in this bulletin. For example, Administrative Bulletin 82-1 defines "limited duration" as "not exceeding one year." (This bulletin does not control the procurement of data processing services.) In our opinion, the Legislature, through various laws and administrative regulations, intended to create a formal distinction between regular state employees (whose salaries are charged against the "01" and "02" subsidiary accounts) and consultants (whose services are charged against the "03" subsidiary account.)

Aware of the Legislature's concern about possible abuses in the "03" system (see the Legislative History section of this report), the State Auditor's Office initiated a review of "03" consultant activity in the departments of Public Works (DPW), Public Health (DPH), and Environmental Quality Engineering (DEQE), and the Executive Office of Transportation and Construction (EOTC) to determine

1. Whether the current use of "03" consultants by state agencies is consistent with legislative intent and in accordance with the applicable laws and regulations.
2. Whether administrative and fiscal controls over the "03" account that have been established by the Executive Office for Administration and Finance (EOAF) adequately safeguard taxpayers' monies.

We also examined consultant activities at the Massachusetts Port Authority (Massport) to determine whether Massport's consultant activities were performed economically and efficiently and in accordance with its own internal policies.

As our audit report demonstrates, the "03" system within these five agencies has not been operating in a manner consistent with legislative intent.

In our opinion, several factors have resulted in an "03" system that is not working economically and efficiently. These several factors together, moreover, have blurred the formal distinction between regular state employees

and "03" consultants--a distinction the Legislature intended to establish. As pointed out in the Joint Committee on Post Audit and Oversight report issued in 1973, a section of the Expenditure Code Manual permits state agencies to hire "03" consultants when state employees are not currently available to render services. The language in this section was criticized by the Joint Committee as being too general, for the language served as an "escape hatch" for agencies wishing to maintain staffing levels without the agencies' having to request additional state-employee positions.

During the 1970s and early 1980s, the Legislature mandated increased responsibilities for many state agencies but did not authorize the necessary additional state-employee positions. In fact, some agencies, such as DPW, experienced substantial reductions in their staffing levels. At the same time, EOAF was decentralizing its control over the procurement and use of "03" consultants by allowing, for example, an individual Executive Secretariat to approve its own agencies' requests for consultant services.

In order to carry out their legislatively mandated responsibilities, state agencies increased their use of "03" consultants, who could provide services that state employees could not provide because they were not available.

As our report shows, these factors have created certain problems in the "03" system: (1) "03" consultants were used as de facto state employees, (2) fiscal controls over procurement practices were weakened, and (3) managerial controls over consultant activities were reduced.

The first finding in our report clearly demonstrates that three agencies hired and used "03" consultants to perform functions that could normally be provided by state employees. Specific instances include the following:

- o Of the \$74 million in "03" consultant contracts that we reviewed, \$40 million was expended for services identical to those provided by state employees.

- o 108 consultants performed state-employee-type services for periods ranging from 13 months to 9 years.
- o We believe that 14 consultants were contracted to either directly or indirectly supervise state employees, a situation that is in violation of Chapter 29, Section 29A, of the General Laws.

The second finding discusses, in detail, the following inefficient and uneconomical "03" procurement procedures employed by the agencies:

- o Because DEQE did not select the lowest qualified bidder for its emergency-response contract, unnecessary expenditures and obligations as high as \$1.2 million may have been incurred.
- o DEQE did not select the lowest qualified bidder for its acid rain/air-quality-monitoring contract, which resulted in unnecessary expenditures and obligations of at least \$21,500.
- o DPW did not use price competition in selecting 129 consultants for contracts totalling \$31 million. We believe that modifications to DPW's procurement process could result in potential cost savings.
- o Massport's management of the State Transportation Building resulted in unnecessary expenditures totalling \$1.2 million.
- o DEQE and DPH awarded 16 contracts, totalling \$3.5 million, on a non-competitive basis.

The third finding focuses on DEQE's inefficient use of "03" funds and on DEQE's overpayments to consultants. In our opinion, DEQE unnecessarily expended approximately \$386,000 when it used a consultant as a fiscal conduit to hire additional state employees.

The fourth finding describes how DPW and EOTC awarded three consecutive contracts to an "03" consultant who did not adequately document the services performed under these contracts. In addition, the consultant billed both agencies for the same three-week period and billed the state for time when he was out-of-state on business unrelated to his contractual services. Because DPW and EOTC did not adequately manage these contracts, there is no assurance that adequate services were received in exchange for the \$70,500 paid to this consultant.

The fourth finding also describes how DPW awarded to a consultant three consecutive contracts totalling \$105,000. The consultant did not complete the tasks required under the first two contracts, which totalled \$70,000. In addition, he was overpaid \$24,505. As of February 1, 1986, the consultant was working under a third contract with DPW.

The fifth finding discusses how Massport, contrary to its own internal policies, allowed nine consultants to begin work before any of the nine contracts totalling \$1.1 million was fully executed.

At the end of each finding and in the Conclusion section of this report, we present to the appropriate state agencies specific recommendations for correcting the problems discussed in our report. We provided each agency an opportunity to respond to our draft audit report. Based on our review of these responses, we revised, where appropriate, sections of the audit report. We have also included, at the end of each finding, excerpts from the auditees' responses, and we have replied to their responses.

We recommend that the Governor and the Legislature investigate the administration and control of the Commonwealth's "03" consultant system. In the interim, we recommend that EOAF:

1. Establish a branch within EOAF that will be solely responsible for the administration and control of the Commonwealth's "03" consultant system.
2. Initiate a review of "03" consultants who are currently performing state-employee-type services. Such a review would be directed at transferring appropriate "03" consultants to state-employee positions.
3. Revise Administrative Bulletin 82-1 so that state agencies can receive more specific guidelines on the procurement of consultants.
4. Direct DPH and DEQE to establish procedures and controls to ensure that consultant contracts are awarded in compliance with EOAF's regulations.
5. Direct DEQE to design and install a standardized consultant-selection procedure that gives adequate consideration to the cost of consultant services.

6. Direct DPW to revise its consultant-selection procedures to include price competition.
7. Direct DEQE to terminate its payroll-service contracts and consider transferring the individuals employed under these contracts to state-employee positions.
8. Direct EOTC and DPW to establish procedures and controls to improve their contract management.

A detailed explanation of these recommendations, as well as other recommendations, appears within the Conclusion section of this report.

Matters for Legislative Consideration: In light of the State Auditor's findings, the Legislature may wish to reconsider House Bill No. 123, which was filed by the State Inspector General during 1986 and which would have transferred the responsibility for managing the State Transportation Building to EOAF's Bureau of State Office Buildings.

Because our audit has disclosed such serious problems in the "03" system and because other audits conducted by the State Auditor's Office indicated significant "03" deficiencies, the State Auditor's Office has initiated "03" audits at the departments of Mental Health, Public Welfare, and Social Services.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit included (1) evaluating the overall economy and efficiency of the Commonwealth's "03" consultant system, (2) identifying problems unique to particular auditees, (3) determining whether the current use of "03" consultants by state agencies is in compliance with applicable laws and regulations and is consistent with the legislative intent of the "03" system, and (4) determining the adequacy of EOAF's managerial and fiscal controls over "03" expenditures.

For this audit we selected three state agencies (the departments of Public Health, Public Works, and Environmental Quality Engineering), one executive office (the Executive Office of Transportation and Construction), and one independent authority (the Massachusetts Port Authority). All consultant contracts awarded or amended during fiscal year 1985 by these agencies were considered for our audit tests. These contracts totalled \$86 million. Because of internal recordkeeping procedures at the Department of Public Works (DPW), we considered only those contracts against which DPW incurred expenditures during fiscal year 1985.

Our audit methodology included (1) reviewing applicable laws, regulations, and relevant state reports; (2) interviewing officials from regulatory agencies involved with the "03" system: the Executive Office for Administration and Finance, the Department of Personnel Administration, the Division of the State Comptroller, and the Rate Setting Commission; (3) conducting interviews with selected agency officials and staff personnel; (4) examining consultant contracts, accounting records, attendance and activity reports, and other related documentation; (5) performing an on-site audit of a consulting firm

employed by the Department of Environmental Quality Engineering; and (6) interviewing officials from the executive offices of Human Services, Transportation and Construction, and Environmental Affairs.

LEGISLATIVE HISTORY

In July 1963, the Committee on Public Service passed House Bill No. 3623: "An Act Regulating the Hiring of Consultants by Any State Agency, Board, Department or Commission." The final form of this bill was approved on August 26, 1963 as Chapter 676 of the Acts of 1963, and it established Chapter 29, Section 29A, of the Massachusetts General Laws, which:

1. Defines the term "consultant" as "a person, who as a nonemployee of the Commonwealth, gives advice or service regarding matters in the field of his knowledge or training and whose compensation is payable from a subsidiary account coded under '03' in the expenditure code manual."
2. Instructs the Commissioner of Administration in the Executive Office for Administration and Finance (EOAF) to make "rules and regulations governing the use of consultants in all departments . . . [and to determine] the rate of compensation of such services"

The legislative Joint Committee on Ways and Means established the "03" subsidiary account, from which all consultants are paid. Its Expenditure Code Manual (under "03 Services - Non-Employees") contains two requirements for the employment and payment of all (professional and non-professional) consultants. The consultant service "must be for a limited specified period of time," and, second, the service "must be a service which personnel in the classified service of the Commonwealth ordinarily do not render or are not currently available to render."

A third requirement applies to professional consultants only: "The service . . . must be of recognized professional status requiring discretion and judgment in a formal field of knowledge and academic study, training or experience."

Chapter 29, Section 29A, of the General Laws and the Expenditure Code Manual form the legislative basis of the Commonwealth's "03" consultant system.

Twice since then, in 1973 and 1985, the Legislature has acted to tighten internal controls over "03" activities as well as to re-emphasize the fact that consultants are not state employees and therefore should not provide services that state employees already provide. On January 15, 1973, the legislative Joint Committee on Post Audit and Oversight issued a 60-page report on the use of consultants by state agencies. The report cited "laxity and irresponsibility" on the part of the Commissioner of Administration, who had been authorized by the Legislature to control the consultant system. The report notes that EOAF

. . . considers the "03" account as autonomous and has concluded that it is within its prerogatives to use the account for whatever purposes it deems desirable. The present system is too general in nature and lends itself, gratuitously, to abuse.

With respect to the actual use of "03" consultants, the report states:

. . . the "03" subsidiary account [is] being diverted from its true intent and purpose as spelled out in the [Expenditure] Code Manual. Instead of being used to acquire the services, when necessary, of consultants (NON-EMPLOYEES), it has become a vehicle for the employment of personnel who, for all intents and purposes, are state employees.

In its summary, the Committee charged that succeeding Commissioners of Administration have not exercised proper control over the "03" account:

The net result is a series of abuses which have rendered the intent and purpose of the "03" account meaningless. No longer is it the vehicle whereby specialized services are obtained for a particular purpose for a limited specified period of time. It is now merely another method of hiring state employees.

Following the issuance of this report, Chapter 29, Section 29A, of the Massachusetts General Laws was amended by Chapter 1230 of the Acts of 1973. The amendment added specific filing and approval requirements for the hiring of all consultants. Under the amended statute, agencies are required to submit a formal request for each consultant to be hired. The request form must

set forth the need for such services, the period of time for which the services are to be engaged, and the scope of work to be done. A written contract and the proposed consultant's resume must accompany each request form. The request must then be approved by the requesting agency's Executive Secretary and filed with the State Comptroller's office. The amendment further requires that no consultant directly or indirectly supervise a temporary or permanent employee of the Commonwealth.

Section 30 of Chapter 140 of the Acts of 1985 requires the Commissioner of Administration to review every request for consultant services submitted by state agencies. Section 30 of this Act also requires that each "03" consultant contract include the following information: ". . . the manner in which the said services are to be rendered including the tools, implements, equipment necessary and a description of the physical setting in which said services are to be performed. . . ."

This Act is effective for fiscal year 1986 only.

In its fiscal year 1987 budget recommendations report, the House of Representatives has addressed the problems in the "03" consultant system. In the section "Budget Reform - A First Step" of the report, it is stated:

A further area of concern over the past years has been the inappropriate and often abusive expenditure of funds for non-employee or consultant services, the so-called "03" costs.

The . . . [legislative intent] is clear that an "03" consultant is not an individual who could be defined as an "employee." Nonetheless, there exists, throughout numerous state agencies, hundreds of "03" consultants who are performing jobs which should more appropriately be performed by state employees.

The report also recommends changing the status of several hundred employees from that of "03" consultant to that of regular state employee:

Although on the surface this action increases the number of state employees, in reality this recommendation attempts to restore integrity and validity to the Commonwealth's personnel system. Furthermore, it

provides the Department of Personnel Administration with the opportunity to evaluate and recommend fair and equitable salary levels for these employees, something which is now beyond their scrutiny. Finally, the Legislature regains its ability to specify the number of full-time positions which should be hired by any agency during the fiscal year.

Section 19 of Chapter 488 of the Acts and Resolves of 1986 effectively precludes the use of "03" consultants as state employees:

Consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions.

Clearly, the Legislature has tried to control the "03" consultant system so that state agencies do not use "03" consultants as de facto state employees.

EXPLANATION OF FINDINGS AND DEFICIENCIES

1. Consultants Used as De Facto State Employees

In our opinion, the Legislature intended to create a formal distinction between regular ("01" and "02") state employees and "03" consultants, yet our audit disclosed that, in many instances, the distinction does not exist. Of the \$74 million contracted by the departments of Public Works, Public Health, and Environmental Quality Engineering for consultant services during fiscal year 1985, approximately \$40 million (or 54 percent) was used to employ consultants who were de facto state employees.

Under Chapter 29, Section 29A, of the General Laws and in accordance with the Expenditure Code Manual, "03" consultants, as "Non-employees of the Commonwealth," (1) must have recognized professional status requiring discretion and judgment in a formal field of knowledge and academic study, training, or experience; (2) must be employed only for a limited specified period of time; and (3) must provide a service that regular state employees (whose salaries are charged against the "01" and "02" subsidiary accounts) "ordinarily do not render or are not currently available to render." Chapter 29 also prohibits "03" consultants from supervising regular state employees.

We found that, contrary to these requirements, state agencies that we audited (a) hired "03" consultants to perform ongoing departmental functions within the scope of state positions, (b) employed consultants for periods exceeding one year, and (c) permitted consultants to supervise state employees.

Officials from each of the agencies cited above, as well as from the Executive Office of Human Services and the Executive Office of Environmental Affairs, agreed with our conclusion that many "03" consultants provide services identical to those ordinarily performed by regular state employees, and they pointed to the state budgetary process as the cause of the problem. According

to these officials, the Legislature, while increasing the agencies' responsibilities, is (and has been) largely unwilling to authorize additional "01" and "02" state-employee positions. For instance, the Department of Public Health has been legislatively mandated to initiate a Nutrition Office and an AIDS Program, but no additional state-employee positions have been authorized by the Legislature. The departments of Public Works and Environmental Quality Engineering have been required to expand existing programs without commensurate increases in authorized staffing levels.

Like the Legislature, the Executive Office for Administration and Finance (EOAF), according to these officials, has attempted to limit increases in "01" and "02" positions. The Executive Secretary of EOAF, who also serves as the Secretary of Administration in the Governor's Cabinet, works extensively with state agencies and other executive offices in formulating their annual budget requests. The finalized budget requests are submitted to the Governor, who, in turn, submits his budget recommendations to the Legislature. The officials told us that in recent years EOAF has actively pursued a course of limiting or "capping" the number of state-employee positions that agencies request from the Legislature. Some of these officials stated that EOAF, like the State Legislature, does not want to be put on record as proposing increases in the number of state employees. Consequently, agencies have been reluctant to request needed "01" and "02" positions. These officials have concluded that agencies must utilize "03" consultants in order to adequately provide legislatively mandated services to the public.

Using consultants as if they were state employees is permitted under the legislative requirement that "03" consultants provide services which "regular state employees ordinarily do not render or are not currently available to render" [emphasis added]. However, a 1973 study of the "03" system issued by

the Joint Committee on Post Audit and Oversight criticized the language in the Expenditure Code Manual that permits state agencies to use consultants as de facto state employees. The report describes the language in the Expenditure Code Manual (quoted above with emphasis added) as "very broad and general" and goes on to characterize the clause as an "escape hatch."

In our opinion, using large numbers of "03" consultants to perform, on an ongoing basis, the tasks ordinarily carried out by state employees blurs the formal and necessary distinction between ("01" and "02") state employees and "03" consultants.

Unless a clear distinction is maintained, the size and composition of the state's workforce cannot be meaningfully determined. (The problem of determining the size and composition of the state's workforce is further complicated by the fact that a master listing of consultants does not exist.) In addition, using "03" consultants as de facto state employees lessens the Legislature's control over determining the number of employees that state agencies may hire in carrying out their mandated responsibilities.

Finally, the use of consultants as de facto employees carries with it a contingent liability to the Commonwealth. In 1980, a former "03" consultant who had been transferred to a state-employee position was awarded a 19-month retroactive pay raise as a result of a grievance she filed with the Commonwealth. This individual sought to have her years of service as an "03" consultant included in her total years of service as a state employee in order to enhance her seniority status (and consequently her salary rate) within her current position.

The case went to binding arbitration on January 27, 1980. Deciding in favor of this individual, the arbitrator stated in his opinion:

This is not a case in which the Commonwealth contends that a consultant was truly an "independent contractor," as that term has been defined in

statutes and court cases. Thus, although . . . [the plaintiff] was called a "consultant," there is no contention that she had independent status. The status that she held was as a regular employee who was categorized as a "consultant" for the Commonwealth's convenience--for fiscal reasons alone, wholly unrelated to her actual employment status or duties. It is a fancy fiscal fiction that ought not be the basis for penalizing employees.

Subsequent to this case, the Commonwealth entered into an agreement with the state employees' collective bargaining units that addresses the issue of "03" consultants transferring to state positions. This agreement stipulates that such persons are entitled to have their length of service considered for the purposes of salary determination and vacation status, provided that their "03" service was performed under the direct control of the Commonwealth and under the same or similar conditions of employment as state employees.

Three specific findings pertaining to the use of consultants are discussed in the three following sections. Our recommendations appear immediately following these subsections.

A. Consultants Performed Ongoing Agency Functions: As shown in the table below, a significant number of "03" consultants contracted by the departments of Public Works, Environmental Quality Engineering, and Public Health did not provide non-employee services. Instead, consultants were used to perform routine services--services that were, or are also being, performed by state employees--in order to augment an agency's staff:

<u>Agency</u>	<u>Total Fiscal Year 1985 "03" Consultants</u>		<u>Consultants Who Performed Routine Services</u>	
	<u>Contracts</u>	<u>Amount</u>	<u>Contracts</u>	<u>Amount</u>
DPW	165	\$45,174,359	104	\$35,111,454
DEQE	179	15,583,530	121	3,108,120
DPH	430	13,243,348	92	1,463,119
	<u>774</u>	<u>\$74,001,237</u>	<u>317</u>	<u>\$39,682,693</u>

Department of Public Works (DPW): During the audit period, DPW used consultants in many of its day-to-day operations, such as bridge inspections and

public relations. DPW is required to rate and inspect bridges to determine safety, maximum load capacity, and rehabilitation needs. Previously, this function was performed primarily by state employees although consultants were hired for bridges that were difficult to access and thus special expertise was required. Today, however, DPW, according to one DPW official, "relies heavily" upon consultants to perform this service on all types of bridges throughout the Commonwealth.

To take another example, DPW's Public Information Office has ongoing responsibilities such as the agency's newsletter, media interaction, consumer awareness, and public information campaigns for special DPW projects. For these ongoing and routine activities, the Public Information Office utilized "03" consultants. Public information and public relations consultants are also used regularly in the DPW Commissioner's Office to augment existing employee resources.

The table below details DPW's fiscal year 1985 consultant contracts under which services were provided within the scope of state positions.

<u>Consultant Service</u>	<u>Number of Contracts Awarded</u>	<u>Total Contract Amount</u>
Surveying Services	36	\$14,043,782
Environmental Services	13	7,836,023
Traffic Planning	10	4,144,030
Bridge Rating and Inspection	12	4,139,500
Highway and Bridge Design	14	2,881,253
Project Management	5	1,544,570
Highway Maintenance	3	269,840
Public Information	11	252,456
	<u>104</u>	<u>\$35,111,454</u>

Officials from DPW acknowledged that many consultants do in fact provide services identical to those performed by regular DPW employees, and they cited the drastic personnel cutbacks of 1981 as the reason for hiring consultants.

In 1981, DPW was forced to lay off 25 percent of its employees when the Legislature reduced DPW's personnel appropriations. The cuts reduced DPW's workforce from 3,983 to 2,987 employees and made it impossible for DPW to continue providing legislatively mandated services at the pre-layoff level. Consequently, DPW, these officials stated, began relying upon the "03" system to maintain its level of service to the public.

DPW's increased reliance upon "03" consultants is evidenced by the significant increase in its "03" expenditures between fiscal years 1981 and 1985. During this period, DPW's "03" expenditures rose 52 percent, while its state employee payroll expenses increased by only 20 percent.

DPW has agreed with EOAF to cap future "01" and "02" personnel requests at 3,477 positions. If the Legislature approves this level of staffing, DPW's employee workforce will still be 506 positions under the 1981 level. Unless additional state-employee positions are authorized, DPW must continue to rely on consultants to carry out its legislatively mandated functions.

Auditee's Response: In response to our draft audit report, DPW asserted that all 104 consultant contracts met the criteria outlined in the Expenditure Code Manual. Specifically, the contracts were all, according to DPW officials, professional in nature, for a limited period of time, and for services for which state employees were not available.

DPW took exception with the characterization of these consultant services as routine. They stated:

They are services which are clearly professional in nature, demand discretion and judgment in a formal field of knowledge and academic study, and require appropriate training or experience.

DPW officials also stated that their increased reliance on "03" consultants, as shown by the increase in "03" expenditures between 1981 and 1985, was

the direct result of increased highway-construction activities during that period.

Auditor's Reply: We agree that DPW's use of consultants was in compliance with the criteria set forth in the Expenditure Code Manual. We would like to note, however, that DPW's reliance on the so called "escape hatch" clause (the unavailability of state employees) supports our contention that the consultants were utilized to provide services within the scope of ongoing DPW operations.

We do not believe that our use of the term "routine" is inconsistent with the professional status or training of some consultants. We believe, however, that the routine and ongoing operations of a state agency are more appropriately performed by trained and experienced state employees as opposed to consultants.

Finally, it is reasonable to assume that an increase in highway-construction activity would have necessarily resulted in an increase in "01" and "02" expenditures had the positions and funds been available. Since the funds and positions were not available, we see the "03" expenditures rise as the direct result of DPW's need to rely on consultants to provide legislatively mandated services.

Department of Environmental Quality Engineering (DEQE): During fiscal year 1985, DEQE initiated 179 consultant contracts totalling \$15,583,530. Of that amount, 121 contracts (68 percent) totalling \$3,108,120 were awarded to "03" consultants for services that fall within the scope of DEQE positions (i.e., regular "01" and "02" state employees).

Consultants employed under these 121 contracts performed duties including environmental planning, water analysis, accounting, and administrative services. DEQE's regular employees performed identical duties, and the consultants

and regular employees reported to the same supervisors. The table below details DEQE's fiscal year 1985 contracts that provided for routine services within the scope of state positions.

<u>Consultant Service</u>	<u>Number of Contracts Awarded</u>	<u>Total Contract Amount</u>
Corporate Services*	9	\$1,076,924
Administrative Support	33	669,357
Environmental Services	32	493,522
Clerical Services	21	409,000
Environmental Planning	13	212,385
Legal Services	9	160,479
Public Information	4	86,453
	<u>121</u>	<u>\$3,108,120</u>

*The New England Interstate Water Pollution Control Commission (NEIWPCC) provides a variety of routine services to DEQE including administrative support, clerical and environmental services, and planning.

DEQE officials acknowledged that many consultants are essentially state employees who are needed to adequately carry out DEQE's basic functions. These officials stated that the number of authorized state positions has not kept up with DEQE's increased responsibilities over the past several years. They added that because the Legislature and EOAF have been unwilling to propose new positions, DEQE has been forced to use the "03" account to provide the necessary services normally provided by regular state employees. These officials concluded that the "03" mechanism is the primary method for "getting the job done."

The Assistant Secretary for the Executive Office of Environmental Affairs (EOEA), which oversees DEQE, agreed with this assessment. He added that EOEA generally discourages its agencies from requesting additional state-employee positions because of the unlikelihood of having such requests approved.

Auditee's Response: In response to our draft audit report, DEQE stated that of the 121 contracts cited in the report, 82 contracts "could be considered as hiring individuals for 'routine' services that could be provided by regular state employees." These 82 individuals provided services "that State employees were not currently able to render in compliance with legislative intent and EOAF regulations." DEQE's response continues:

These 82 individuals were hired to help start up new environmental protection programs, funded by the Federal and State governments, for which no 01 or 02 positions were yet authorized. If these individuals had not been hired, very important programs would not have been initiated--which would have been contrary to the public interest.

DEQE has been actively pursuing the conversion of all consultant functions that could be performed by state employees to state employees. As part of the FY'87 state budget, DEQE has received 20 new, regular state positions to use to shift consultant work to state employees. The department's FY'88 budget request includes 14 additional positions which would be used to shift all remaining consultant functions to state employees. As a result of all of the actions that have been and are in progress, it is expected that by the middle of FY'88, all functions that could be performed by state employees will be performed by state employees.

Of the remaining 39 contracts, DEQE stated that 9 were corporate contracts, 14 double-counted other contracts, and 16 were for temporary clerical services for such purposes as covering office functions during temporary peak work periods (such as starting the Right to Know Program), vacation periods and periods of extended sick leave.

Auditor's Reply: We agree with DEQE's position that 82 contracts were used to hire consultants needed to carry out the agency's legislatively mandated functions. However, in our opinion, the remaining 39 contracts were also necessary to carry out the ongoing functions of DEQE. The 9 corporate contracts were with NEIWPC, a non-profit organization, which provides a variety of routine services to DEQE. (NEIWPC is discussed further in the third finding of this report.) Each of the 14 amended contracts cited by DEQE were used to renew or extend a consultant's employment with a commensurate increase

in the contract amount. Since these contracts incurred new financial obligations to the Commonwealth, they are not "double-counted." Finally, the \$409,000 that DEQE contracted for to obtain clerical services and DEQE's consistent level of expenditures under these contracts are, in our opinion, indicative of DEQE's ongoing need for additional clerical positions.

Department of Public Health (DPH): During fiscal year 1985, DPH executed 430 consultant contracts totalling \$13,243,348. Of this amount, 92 contracts (21 percent) totalling \$1,463,119 were for services within the scope of state positions. The table below details DPH's fiscal year 1985 consultant contracts that provided for routine services within the scope of state positions.

<u>Consultant Service</u>	<u>Number of Contracts Awarded</u>	<u>Total Contract Amount</u>
Health Care	54	\$881,054
Administrative	22	329,522
Research	16	252,543
	<u>92</u>	<u>\$1,463,119</u>

The 92 contracts were primarily with individual consultants rather than with organizations. DPH used these consultants, along with state employees, to carry out many of its daily operations, for example, direct-client care, program planning, public relations, and administrative support. In each case, consultants and state employees worked along side each other, performed similar duties, reported to the same supervisors, and received equal pay.

DPH officials agreed with our conclusion that many of DPH's "03" consultants are essentially state employees who are needed to carry out adequately DPH's basic functions. They added that if additional state-employee positions were to become available through the state budgetary process, DPH would act to transfer its "03" workforce into these positions. Managers from the Executive

Office of Human Services (EOHS), which oversees DPH, agreed with this assessment and cited the reluctance of EOAF to ask the Legislature for more state-employee positions as the reason.

Auditee's Response: In response to our draft report, DPH asserts that "contracting with consultants for routine services is . . . not only appropriate, but is often required as situations warrant to carry out functions mandated by the Legislature or the Federal government" Specifically, "DPH received funding for new state programs in the fiscal year 1985 budget without the creation of new positions necessary to implement them. Funding for these programs was appropriated in the 03 subsidiary by the Legislature."

"While needing staff to implement [federal] programs, DPH recognized its responsibility not to incur long-term liability for the Commonwealth by requesting the creation of new positions for short-term Federal grants."

DPH stated that of the 92 contracts cited in the report, "36 could be considered de facto employees," 34 of whom have either already been or will be transferred into state "02" positions.

Of the remaining 56 contracts, DPH stated that 17 double-counted other contracts, and 39 contracts were with consultants who are no longer employed by DPH.

Auditor's Reply: We agree with DPH's position that 36 of the contracts were for consultants who served as de facto employees necessary to carry out the legislatively mandated functions of the agency. However, in our opinion, the remaining 56 contracts were also necessary to carry out the ongoing functions of DPH. DPH's claim that 39 contracts were with consultants who are no longer employed has no bearing upon the fact that they were employed, during our audit period, to perform routine ongoing functions at DPH. Finally, we do not agree that the 17 contracts were double-counted. Each of these contracts

amended an existing contract, extending the consultant's employment and increasing the Commonwealth's financial obligations.

B. Consultants Employed for Prolonged Periods: Our audit identified 108 individuals who were employed at DPH and DEQE under consultant contracts on a full-time continuous basis for periods ranging from 13 months to 9 years. This practice is contrary to two requirements of the "03" system. The Expenditure Code Manual requires that all "03" services be "for a limited specified period of time." EOAF's Administrative Bulletin 82-1, Section 4.08(a), further defines this time-limitation requirement (for contracts with individuals) to mean "not exceeding one year." However, the Secretary of Administration may waive the one-year requirement if "a request by an agency and certification by the secretary of its executive office [is submitted] in writing as to the need for such waiver."

Although the Legislature clearly intended "03" services to be temporary, EOAF has established a waiver policy that we believe has rendered this intent meaningless. If a state agency believes that individual "03" services are needed for an extended period, the agency can simply request a waiver from EOAF. The only requirement is that the request be in writing and that it specify the need for the continued services, but EOAF officials admitted that waivers are rarely denied.

During fiscal year 1985, DPH and DEQE requested waivers for 48 and 9 individual consultants, respectively, whose services were needed beyond one year. In each case, the agencies specified that "03" services were needed because state-employee positions were not available. The Commissioner of Administration approved each of these waivers, and the consultants were allowed to continue their employment. For 3 of DPH's consultants, this was their fourth consecutive waiver. Each waiver request submitted by DPH and DEQE indicated

that the agency was using the "03" system to simply augment staff resources for prolonged periods.

Furthermore, 32 individual consultants (13 employed by DPH and 19 employed by DEQE) have been working for more than one year on a full-time basis; however, neither DPH nor DEQE sought waivers for any of these 32 individual consultants. Rather, these agencies simply processed new contracts for each of the consultants through the State Comptroller's Division, and the violations went undetected.

Finally, 19 individuals working under organizational consultant contracts with DEQE have been performing, on a full-time basis, routine services at DEQE's offices for periods of one to nine years. These individuals are exempt from any restrictions on their length of services, because EOAF's regulations do not require that organizational consultants' services be limited in duration.

In our opinion, EOAF needs to strengthen its monitoring and enforcement of the waiver requirement. In addition, EOAF should amend its regulations to include some type of limited-duration requirement for organizational consultants. We believe these actions would ensure the "03" system operates in the manner intended by the legislature. Under current regulations, state agencies can extend, for as long as the agencies wish, the employment of full-time "03" consultants who perform routine services.

Auditees' Response: DPH officials explained in response to our draft report that 12 of 13 consultants, identified as not having appropriate waivers of the duration limit, had anniversary dates which occurred during the fiscal year. DPH officials explained:

Although waivers were requested for consultants having July 1 anniversary dates as part of the fiscal year 1985 recontracting process, waivers were inadvertently not requested when anniversary dates occurred later in the fiscal year.

DPH points out that it has corrected this problem and states:

There are no longer any consultants performing services for more than one year for whom waivers have not been approved.

According to DPH, the thirteenth consultant did have an approved waiver.

DEQE officials explained that of the 47 consultants employed for longer than 12 months, 19 were employed under organizational contracts, 10 were contracts with the same individuals but the scope of their services changed from one year to the next, 9 had EOAF waivers of the time-limit requirement, and 9 required waivers but DEQE did not have them on file.

DEQE defended its use of consultants over prolonged periods:

There were a number of personal service consultants performing functions important to DEQE's mission and the need for these services was of a continuing nature. Without these consultants, DEQE would have been unable to meet these needs.

Auditor's Reply: Neither DPH nor DEQE disputed our contention that consultants are used for prolonged periods to augment staff resources. In fact, DEQE emphasized in its response the essential and ongoing nature of the services these consultants provide. We acknowledge that consultants are performing functions important to the missions of these agencies.

DPH was unable to provide us with documentation for the consultant it stated as having an approved waiver.

We accept the break-out of contract-type provided by DEQE in its response as an accurate description of the 47 contracts. We do not believe that the descriptions provided alter the fact that these 47 consultants were engaged in full-time continuous employment for periods exceeding 12 months. We believe that the use of consultants to provide essential (routine) services on an ongoing basis is a practice that runs contrary to the legislative requirement that consultant services be temporary in nature.

C. Consultants Directly or Indirectly Supervised State Employees: Chapter 29, Section 29A, of the General Laws states, in part: "No person employed by the Commonwealth as a consultant so-called shall directly or indirectly supervise another temporary or permanent employee of the Commonwealth." In Administrative Bulletin 82-1, Section 4.14, EOAF promulgated this restriction and defines the term "supervise" to mean "to direct the activities of an employee on a continuing and comprehensive basis, by either direct communication, verbal or written, from the contractor to the employee, or by indirect communication through a third party." To determine agency compliance with the applicable laws and regulations, we reviewed the available relevant documentation--for example, organizational charts, resumes, and internal memoranda. Based on this review, we believe that 9 consultants at DPH and 5 consultants at DEQE directly or indirectly supervised state employees.

DPH and DEQE officials have stated that these consultants did not supervise any state employees. However, the documentation we reviewed indicates that the consultants did supervise, directly or indirectly, state employees. DEQE's organizational charts clearly show consultants directing the activities of state employees. DPH's contracts required that the consultants supervise and direct the activities of DPH employees. Furthermore, the job titles of the 9 consultants working at DPH and the 5 consultants at DEQE certainly suggest that these 14 consultants had supervisory functions. At DPH 2 consultants were employed as Directors; 2 as Assistant Directors, and 2 as Chiefs of Staff.

At DEQE 1 of the 5 consultants held the position of Assistant Deputy Commissioner and has worked for DEQE as a consultant since 1976. Resumes of 2 of the 5 consultants employed at DEQE, indeed, state that the 2 consultants supervised state employees. DEQE's internal memoranda and organizational charts

show the 5 consultants holding supervisory positions; however, their supervisory duties are not indicated on the consultants' contracts and the AF-4s submitted to EOAF.

Auditees' Response: Both DPH and DEQE asserted that none of these 14 consultants supervised state employees. The agencies stated that the documents used by the auditors in reaching their conclusion did not accurately portray consultants' actual duties and responsibilities.

Auditor's Reply: In our opinion, despite the agencies' responses to the contrary, much of the documentation we reviewed indicates that these 14 "03" consultants working at DPH and DEQE did supervise, directly or indirectly, state employees.

Recommendations: The State Legislature has recognized the need for reform within the Commonwealth's "03" consultant system. The Senate has recently passed a bill that would require that "consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions." The House of Representatives has, in its Budget Recommendations Report for fiscal year 1987, recommended the transfer of several hundred "03" consultants to state positions (a) to "restore integrity and validity to the Commonwealth's personnel system," (b) to "provide the Department of Personnel Administration with the opportunity to evaluate and recommend fair and equitable salary levels for these employees," and (c) to ensure that "the Legislature regains its ability to specify the number of full-time positions which should be hired by any agency during the fiscal year."

In our opinion, these initiatives represent a constructive effort to reform the Commonwealth's "03" consultant system.

To help to ensure the success of these and future initiatives, we recommend that EOAF, which has been legislatively mandated to regulate the "03" system, conduct a statewide review of "03" consultants who are currently performing state-employee-type services. Such a review would be directed at transferring appropriate "03" consultants to state-employee positions.

We also recommend that the Governor and Legislature investigate the administration and control of the Commonwealth's "03" consultant system. In the interim, we recommend that EOAF consider establishing a branch that would be solely responsible for the administration of the "03" account. This branch would be responsible for ensuring that agencies comply with EOAF regulations and that the "03" account is used for its intended purpose.

EOAF's Response: In responding to our draft report, the Commissioner of Administration and Finance disputed most of the issues we raised. However, he also made the following comments:

. . . I share your belief that the system can be better managed. In fact, since the start of this calendar year, I have undertaken several management initiatives and plan to institute more in the near future. These include:

1. Personally reviewing and approving, or disapproving, every 03 consultant contract proposed by agencies and approved by their appropriate Cabinet Secretary. In many instances, I have not approved the contracts.
2. Requiring, as a result of this personal review, that each agency prepare an "03 Spending Plan" for the 1987 fiscal year for my review and approval, prior to my authorizing any 03 contract. Again, in many instances, I have refused to authorize consulting contracts.
3. Initiating, again as a result of this personal review, a process during fiscal year 1987 for the conversion of a large number of individuals on 03 contracts to 02 positions. Moreover, in the fiscal year 1988 budget currently being prepared for submission in January, the Governor will request another large number of 02 positions to be used to convert individuals currently working as 03 consultants.
4. Issuing in the near future, as a result of a very detailed and systematic assessment of the 03 contracting system initiated by this office earlier this year, a complete revision of Administrative Bulletin 82-1, i.e., the regulations governing the contracting of

03 consultants by state agencies. These new regulations are being developed by a senior level Work Group chaired by my Chief Counsel that includes representation from the major state agencies which utilize 03 consultants. . . .

5. Establishing, again as a result of my on-going assessment of the 03 contract system, the position of Assistant Secretary for Contract Compliance within the Executive Office for Administration and Finance. This Assistant Secretary will report directly to me and be responsible for coordinating and monitoring all contracting activities of the Executive Department agencies under the purview of Administration and Finance. This Assistant Secretary, then, will have responsibilities very similar to what the draft report proposes be done by "a branch within the Executive Office for Administration and Finance." In addition, the Assistant Secretary's responsibilities will include the coordination and monitoring of 07 purchase of service contracts and the administration of the small and minority business purchasing programs.

As the above steps clearly set forth, we have already undertaken specific initiatives in this area, including several which are recommended in the draft report, to improve the management of the 03 contracting system. . . .

We share a mutual goal--improving the management of the 03 system--and we have independently arrived at similar conclusions on specific steps toward that goal. Our combined support of these and other steps could chart a new and improved course for the 03 system.

Auditor's Reply: We believe the measures outlined above will address most of the issues raised in our report. However, we wish to point out that these actions did not commence until several months after our audit began.

2. Deficiencies in the Selection and Procurement of Consultants

Our audit revealed that EOAF needs to strengthen its regulations and management controls to ensure the efficient and economical procurement of "03" consultant services. Under the existing regulations and controls, state agencies have been allowed to procure consultant services without adequately considering the cost of those services. Our audit disclosed practices that have resulted in three of the five audited agencies spending at least \$2.4 million unnecessarily.

Section 4.11 of Administrative Bulletin 82-1, which appears in Exhibit VI of this report, requires that all professional consultant contracts having a maximum obligation of \$40,000 or more must be awarded "pursuant to a selection procedure involving . . . the public advertisement in the Goods and Services Bulletin published by the Secretary of State and the solicitation of formal written proposals from at least three qualified vendors. . . ."

Despite these requirements, we believe that EOAF's regulations governing the selection of consultants are deficient. First, the regulations do not require price competition. While agencies are required to employ a selection procedure involving the solicitation of formal written proposals, there is no requirement that an agency consider price in its selection. Consequently, agencies may select high bidders and proposers for consultant contracts without the agencies' having to justify their decision not to choose the lowest bidder.

In addition to the deficiency in the regulations noted above, we believe that EOAF's regulations contain several other deficiencies. First, EOAF's regulations do not address the selection of consultants for professional-services contracts under \$40,000. Consequently, such contracts may be awarded to whomever the agency wishes and by whatever method the agency deems appropriate.

Second, we believe that Section 4.11 does not provide adequate guidelines for selecting consultants on professional contracts over \$40,000 and non-professional contracts over \$500. For instance, the regulation does not specifically provide for the request for proposals (RFP) process, bidders' conferences, incentives for minority contractors, contract negotiation procedures, subcontracting procedures, and the final selection of consultants. By contrast, detailed regulations, addressing each of these issues, exist for the Commonwealth's "07" purchase-of-human-services system.

Because EOAF has not provided detailed instructions for selecting "03" consultants, state agencies have designed their own selection processes, but their procedures do not ensure that state funds are economically spent. For example, DEQE maintains no "03" contracting policies and allows each of its subdivisions to create and implement its own consultant-selection system. One of these subdivisions, the Office of Incident Response, awarded an \$8 million consultant emergency-response contract to a firm that was not the lowest qualified bidder. In our opinion, this award has resulted in the unnecessary expenditure of approximately \$1.2 million in state "Superfund" monies (see page 33 of this report).

A second DEQE subdivision, the Division of Air Quality Control, awarded a \$293,000 air-monitoring contract to a firm that was not the lowest qualified bidder. In our opinion, the state spent at least \$21,500 in excess of its needs when it awarded this contract (see page 43 of this report).

Third, under Subsection 4.113 of Administrative Bulletin 82-1, EOAF has made provision for agencies to select consultants through a "prequalification procedure." The provision, however, does not define the "prequalification procedure," nor does it set forth the minimum requirements necessary for EOAF's approval. As a result, agencies may establish "prequalification procedures" that give no consideration to price competition. For instance, in fiscal year 1985 DPW awarded \$31 million in contracts based upon a prequalification procedure that includes no element of price competition. In our opinion, cost savings might have been realized, had DPW competitively procured these contracts (see page 47 of this report).

Fourth, under Administrative Bulletin 82-1, EOAF is authorized to grant waivers to its competitive-selection requirements (a) if there is only one

qualified vendor (i.e., sole source) or (b) if there is an emergency situation. We found that EOAF granted the Division of Capital Planning and Operations (DCPO) a waiver applicable to a \$2.5 million contract with Massport. In our opinion, approximately \$1.2 million was unnecessarily spent by the state as a result of this award and subsequent contract renewal (see page 53 of this report).

Finally, and of significant concern, EOAF does not enforce its regulations contained in Section 4.11 regarding the selection of consultants. During fiscal year 1985, DPH and DEQE violated Section 4.11 by awarding a total of 16 consultant contracts, totalling \$3.5 million, without following competitive-bid procedures. These violations were not detected by the State Comptroller, no enforcement action was taken, and the contracts were approved (see page 71 of this report).

Because EOAF has not provided detailed procurement regulations and instructions to state agencies and has failed to control the "03" system, the agencies included in our audit have been allowed to award millions of dollars in "03" contracts without the benefit of price competition. Our audit has revealed that this situation has resulted in unnecessary costs to the Commonwealth.

A. Failure To Select Lowest Qualified Bidder for Emergency Response Contract: DEQE did not select the lowest qualified bidder for its statewide emergency-response contract. For this contract, DEQE rated two consulting firms technically competent and reported to EOAF that the lowest qualified bidder was selected to provide the services. However, because the firm that was selected had actually submitted the higher bid, DEQE wasted as much as \$1.2 million of state monies, which could have otherwise been used to further

DEQE's mission of preserving and enhancing the quality of the Commonwealth's natural resources.

On February 27, 1984, DEQE awarded a \$1 million two-year "03" contract to Clean Harbors, Inc. of Kingston, Massachusetts. The purpose of this contract was to respond to statewide emergency situations involving the release, or threat of release, of oil and other hazardous materials. To have the firm perform initial remedial measure (IRM) activities, DEQE amended the contract five times during the period February 1984 to February 1986, increasing the total contract amount 800 percent, to \$8.1 million, and extending the duration of the contract by one year, to February 1987. As of March 1, 1986, \$5.1 million had been expended against this contract, and \$3 million remained committed for future services.

The contract was awarded to Clean Harbors, Inc. even though another firm, Jet Line Services, Inc. of Stoughton, Massachusetts, was identified through DEQE's own selection process as the lowest qualified bidder. DEQE's failure to select Jet Line Services has resulted in the overexpenditure of much-needed hazardous waste clean-up funds.

During August 1983, the Acting Director of DEQE's Office of Incident Response assigned four individuals to a committee responsible for designing and implementing a process for awarding DEQE's statewide emergency-response contract. The committee established a grading system to evaluate the qualifications and service costs of all interested firms. The committee decided that any interested firm deemed to possess insufficient qualifications would automatically be dropped from consideration.

On October 31, 1983, the committee mailed RFPs to more than 50 companies. Four firms responded, and the committee decided that only 2 were adequately qualified to perform the work: Clean Harbors, Inc. and Jet Line Services. At

this time, the committee informed the 2 other firms of their being dropped from consideration and proceeded with the evaluation of cost proposals from Clean Harbors and Jet Line. The committee's evaluation identified Jet Line's average response cost to be 14.7 percent lower than that of Clean Harbors.

In December 1983, the committee completed its selection process. Minutes of the committee's deliberations were not available. The only documentation available for our examination were summaries of scores awarded by the committee. Final scores (shown below) indicate that Jet Line Services initially out-scored Clean Harbors by approximately 3 points (82.656 to 79.574). The committee then decided to conduct surprise inspections of the two firms' facilities in order to verify information contained in the firms' proposals.

Based upon the committee's December 29 inspection of Jet Line Services and its December 30 inspection of Clean Harbors, adjustments were made to both firms' scores. Jet Line's total score was adjusted downward, while Clean Harbor's score was raised. Clean Harbors was then awarded the contract. A summary of the committee's initial ratings and adjustments are as follows:

Initial Ratings

<u>Qualifications</u>	<u>Possible Points</u>	<u>Jet Line</u>	<u>Clean Harbors</u>
Resources	15	12.000	12.000
Management	16	8.750	10.000
Technical Approach	34	26.906	27.719
Subtotal	65	47.656	49.719
Cost	35	35.000	29.855
Total	<u>100</u>	<u>82.656</u>	<u>79.574</u>

Adjusted Ratings

	<u>Possible Points</u>	<u>Jet Line</u>	<u>Clean Harbors</u>
Resources	15	-1.75	No change
Management	16	No change	+3.25
Adjusted Totals		<u>80.906</u>	<u>82.824</u>

Clearly, the committee considered Jet Line to be fully qualified to perform the services under this contract since it had initially selected Jet Line as one of the two finalists. In fact, Jet Line had held the emergency response contract with DEQE from July 1981 to February 1984, when the contract was awarded to Clean Harbors. In a letter dated March 1, 1984 to an official of Jet Line Services, the Acting Director of DEQE's Office of Incident Response stated:

I sincerely hope that our decision to contract with another firm will not be perceived in any way as DEQE's dissatisfaction with Jet Line's services in the past. On the contrary, we feel that Jet Line has performed admirably as the Commonwealth's cleanup contractor.

On the AF-4 Form submitted to the State Comptroller, DEQE indicated that Clean Harbors was "the lowest qualified bid or proposal of three or more bids and proposals." However, the supporting financial analyses clearly indicate that Clean Harbors, Inc. was not the lowest qualified bidder on this contract. The Comptroller's Division, however, failed to verify DEQE's certification and consequently approved the contract on February 29, 1984.

Based on the difference between Jet Line's and Clean Harbors' average project costs, 14.7 percent, cost savings of as much as \$1.2 million could have been realized, had DEQE awarded the \$8.1 million contract to Jet Line.

Aside from our contention that the lowest qualified bidder should have been awarded this contract, we question several of the selection committee's scoring adjustments that resulted from its surprise inspections.

Jet Line's "resources qualifications" were downgraded by 1.75 points for the following reasons:

1. Jet Line's western Massachusetts subsidiary response firm "has very little experience and training and would have to rely on Jet Line for on-site supervision" (0.875 point down-grade).
2. This same subsidiary firm did not maintain a permanently stationed "vac" truck at its western Massachusetts facility. In the event of an

emergency response situation, the subsidiary firm would have to borrow such a truck from Jet Line (0.875 point down-grade).

We question the persuasiveness of the first reason since the relative inexperience of this subsidiary firm had already been considered during the committee's initial evaluation of Jet Line's available resources. To Jet Line's disadvantage, this adjustment effectively and unfairly "double-counts" one component in the evaluation.

Regarding the second reason, the Chairman of DEQE's selection committee told us that Jet Line had offered to permanently station a "vac" truck at this facility. In our opinion, such a move would have resolved this problem.

Clean Harbors' "management qualifications" were upgraded by 3.25 points for the following reasons:

1. Clean Harbors' quality control program was enhanced by its utilization of a centrifuge device (1.25 point up-grade).
2. Clean Harbors employed a CPA firm to produce a monthly expense report. This report "could prove beneficial to DEQE for invoicing and record-keeping" (1.0 point up-grade).
3. This same expense report would provide a "very good audit trail" (1.0 point up-grade).

In our opinion, the first adjustment is valid. We question, however, the last two adjustments. The committee had already recognized this expense report as being "a plus" under its initial evaluation and had graded Clean Harbors accordingly. In effect, DEQE counted this standard twice.

It should also be pointed out that the CPA firm only prepares this monthly expense report; the CPA firm does not audit or verify the expense amounts shown in the report. That is, the report is nothing more than an unaudited compilation of charges against the contract--information that DEQE already has access to on a daily basis. The possible cost savings available to DEQE, had it awarded the contract to Jet Line, should have outweighed any consideration for the questionable benefits attainable from this report.

Had the committee not considered the expense report in its inspection findings, Jet Line would have been awarded the contract, and the Commonwealth would have saved as much as \$1.2 million.

Another area of concern is DEQE's current handling of the emergency-response contract. DEQE has expanded Clean Harbors' duties to include IRM activities. The IRM process involves extensive hazardous-waste removal at various locations throughout the state. Individual IRM projects may take one year to complete and cost as much as \$1 million. Although IRM work is not mentioned in DEQE's contract with Clean Harbors and was not considered in DEQE's "03" selection process, IRM activities currently constitute one-half of Clean Harbors' service charges to DEQE.

Prior to DEQE's awarding the emergency response contract to Clean Harbors, long-term hazardous waste clean-up projects were performed under separate contracts. In 1983, for instance, Jet Line held a contract for hazardous-waste clean-up at two sites owned by an engineering firm. In our opinion, such should be the current policy at DEQE.

Competitive procurement of "03" contractors for individual and specific hazardous waste clean-up projects would enhance the economical and efficient use of state "Superfund" monies. DEQE's current practice of employing its emergency response contractor in major clean-up projects precludes other firms from bidding on these projects. It may also inhibit Clean Harbors' ability to respond to emergency situations in a timely fashion since many of its personnel and equipment resources are being utilized at various IRM locations. Finally, DEQE's use of Clean Harbors for extensive IRM work violates Administrative Bulletin 82-1 as well as Massachusetts General Laws, Chapter 29, Section 29A, both of which require that all "03" contracts describe the specific services to be performed by the consultant.

During the audit, we received information from individuals within the hazardous waste clean-up industry concerning DEQE's award of this contract and certain improprieties that may have occurred. We plan to forward this information along with our audit workpapers to the State Attorney General's Office.

Recommendations: DEQE should establish a standardized vendor-selection process and ensure that all "03" consultant contracts are awarded to the lowest qualified bidder. At a minimum, the process should include:

1. A formalized system to evaluate proposed consultants' qualifications on a consistent and equitable basis.
2. Pre-determined criteria to distinguish qualified from non-qualified proposers.
3. Administrative controls to ensure that contracts are awarded to the lowest qualified bidder.
4. A requirement that, in the event that the lowest qualified bidder is not selected, the rationale for not selecting the lowest bid is fully detailed and documented.

We further recommend that DEQE, in compliance with EOAF regulations, limit its future use of Clean Harbors, Inc., to only those services identified in the emergency response contract. We believe that DEQE should take immediate steps to solicit competitive proposals, under separate contracts, for IRM and other non-emergency hazardous waste clean-up projects, as was DEQE's practice in the past.

Auditee's Response: DEQE agrees with our finding that it should not have indicated to EOAF that the lowest qualified bidder was selected and states that the violation resulted from clerical error. In another instance, we have revised our report to reflect DEQE's correct assertion that its selection of the higher bidder does not violate EOAF regulations. DEQE does not agree with five points that we make in the finding.

- a. The Request for Proposals (RFP) and contract selection process were established to determine the most technically competent contractor to perform the required services. This competitive process resulted in the selection of the contractor who received the

highest overall rating based on a number of factors, only one of which was rates. Unlike service contracts with a clearly defined level of effort and scope of work, this contract contemplated the contractor responding to an unpredictable number of emergencies with varying levels of effort and types of activities. In a situation in which the level of effort and scope of services is clearly defined, comparison of rates among bidders is a reasonable basis for comparison and selection. However, in the Emergency Response Contract the most appropriate measure of performance is the overall approach to the work, including the cost-effectiveness of the approach.

Because each proposer could expend a different level of effort in performing the same service, the Department feels that determination of the "low bidder" among different proposals to this contract is impossible. One could not merely compare rates because the level of effort of each proposer under the contract could be very different. . . .

- b. We disagree that one can arrive at the conclusion that \$1.2 million has or could have been wasted. The Auditor seems to have arrived at this conclusion by making the assumption that Jet-Line would have expended the same level of effort as Clean Harbors. This is not necessarily true.

When DEQE established the evaluation criteria for judging proposals, it gave significant weight to management capabilities and technical approaches in recognition of their value in the overall cost-effectiveness of the contract. The Department believes that paying the cost of the best technical approach is the appropriate criterion for selection of a contractor for these important services.

In fact, Clean Harbors' management and technical capabilities were evaluated to be over 15 percent better than Jet-Line's. Therefore, in order to provide the same level of technical ability as Clean Harbors, Jet-Line may well have needed to expend greater levels of effort to provide the same level of services. This point, which does not appear to have been considered in the Auditor's Report, may well have negated any cost benefit one could assume by simply substituting rates.

I [the Commissioner of DEQE] believe that this extrapolation of "wasted" money is not a logical conclusion. Your argument is based upon the fact that the original emergency response contract was for one million dollars. Subsequent amendments increased the total amount of the contract to \$8.1 million. Your argument assumes that the differences between Jet Line and Clean Harbors' rates can be extrapolated into the future. I do not believe this is a logical conclusion since it is not known what the rates would have been for each vendor if the contract were re-bid at each amendment.

DEQE believes that there was no "waste" and that some cost savings may, in fact, have occurred since by amending the contract the initial labor rates were allowed to be extended.

- c. Initial Remedial Measures are a type of emergency response which was called for in the original RFP and in the subsequent contract. The types of services that are now commonly known as IRMs were requested and always considered part of the contract although the term IRM did not appear in the RFP.

IRMs are no more than classic emergency response actions with a little more planning than the typical oil spill emergency in the middle of night, and require significantly less planning than a long-term site remedial action. IRMs are cost-effective responses because they prevent migration of contaminants. These response actions prevent the incurrence of large future costs.

- d. [The Auditor's point that the amendments to the contract were for the sole purpose of performing IRMs] . . . is not correct. The purpose of the amendments was to increase the maximum obligation to provide enough funds for continuation of all services. Within the first six months of entering into the contract the Department was required to expend \$450,000 for responding to the Peabody Tannery Fire using one half of our first year maximum obligation. The very nature of responding to unforeseen emergency situations reasonably results in increasing the maximum obligation of the contract to continue this response capability. . . .
- e. All instances of double counting alleged by the Auditor are, in fact, reevaluation and rescoring of the pertinent sections of the proposals based on information gathered as a result of the inspections. The explanation of each reevaluation is in the record of decision. The Department is always available to review the basis for its decisions in this matter.

Based upon these surprise inspections, initial scores were re-evaluated, and the contract was awarded to Clean Harbors. It appears that you are in agreement with the agency's right to make the decision to order a surprise inspection of the facilities as a reasonable step to decide between the two contractors. As I understand it, your concern is that the agency scored the results of that inspection differently than you or your staff might have done under similar circumstances. As I pointed out in our discussion, I feel that the issue of whether such an opinion is held by you or your staff is not germane [sic] to the question of whether the contract was awarded properly.

DEQE clearly had a detailed and satisfactory process to select a contractor. From my knowledge of the agency's selection, we believe that we fairly scored the results of the inspection and therefore we disagree only on how the scores were reached. This selection, with all respect to your staff, is the responsibility of this agency and its professional staff. If I am correct in my understanding of this issue, I would question the contention that

there is any basis to say the contract was awarded to other than the bidder most qualified under the selection process.

Auditor's Reply: We address DEQE's five responses in the order presented above.

- a. The closeness of the two firms' qualifications scores and the fact that, prior to DEQE's adjustments, Jet Line had actually outscored Clean Harbors, in our opinion, does not support DEQE's inference that Clean Harbors is technically far superior to Jet Line.

We reject DEQE's contention that a determination of low bidder is impossible and that "one could not merely compare rates because the level of effort of each proposer under the contract could be very different." In evaluating each firm's cost proposal, DEQE did not simply compare rates. Rather, DEQE's selection committee designed four "scenarios" involving hypothetical emergency situations. The committee then decided what level of manpower, equipment, and supplies would be needed by each firm to adequately respond. Based upon the committee's estimation of each firm's response cost, the committee concluded that Jet Line's average response cost would be 14.7 percent lower than Clean Harbors'.

- b. For the reasons stated in item "a," DEQE has failed to support its contention that Clean Harbors' management and technical capabilities "may well have negated any cost benefit one could assume by simply substituting rates."

In our opinion, DEQE's second point is not totally accurate. Four of the five amendments involved increases to the contract's maximum obligation and were made within the initial two-year contract period. Consequently, DEQE could not have re-bid these amendments without violating the contract. DEQE's assertion may apply to the fifth amendment, which renewed the contract for one year at \$3 million.

- c. DEQE's contract with Clean Harbors makes no mention of any service other than emergency responses. Section 1.0, "Scope of Work," of the contract reads:

During the term of this contract, the contractor at the direction of the Department, will provide services to respond at any time and at any location in the Commonwealth or its territorial waters to emergency situations involving releases and threats of release of oil and hazardous materials.

Furthermore, in a memorandum dated February 5, 1986, to the Commissioner of DEQE, the Director of DEQE's Division of Solid and Hazardous Waste stated:

While the existing ER [emergency response] contract with Clean Harbors does not explicitly address IRM's or Operation and Maintenance, we have relied on Clean Harbors,

Inc. to provide these services. Extending the existing contract means that we will continue to rely on Clean Harbors to provide IRM and Operation and Maintenance services until a new contract(s) is in place.

The Director also states: "IRM's usually are expensive, some costing \$1 million or more."

Requesting a \$3 million renewal to the emergency-response contract, the Director cites a need for \$1.5 million for emergency-response activities and \$1.5 million for IRM's, "based on IRM's underway, IRM's planned, and a contingency for unknown IRM's."

In our opinion, DEQE has made a clear distinction between emergency response services and IRM's.

- d. While it is clear that the nature of emergency response services can create unforeseen budget variances, the significant increases in the dollar amount of this contract is, in our opinion, chiefly attributable to IRM activities. In a letter dated November 5, 1985 to the Commissioner of DEQE, the Director of DEQE's Division of Solid and Hazardous Waste recommended that Clean Harbors' contract be increased by \$2.1 million. In justifying the increase, the Director cited the need for emergency-response funding of \$500,000 and IRM funding of \$1.6 million. The IRM funding would be used for 3 specific projects located in Attleboro, Palmer, and Oxford.
- e. While DEQE defends its reevaluation scores and selection of Clean Harbors, it does not address what we believe are the major issues raised in our finding. Specifically, the question of why certain adjustments were made despite: (1) Jet Line's willingness to permanently station a "vac" truck at its western Massachusetts subsidiary; (2) the questionable importance of the CPA report; and (3) the fact that several factors had already been considered in DEQE's initial grading of the two firms.

In our opinion, DEQE's rationale for making several of these reevaluations remains unclear. For the reasons stated in our report, we believe that the significant cost savings available to the Commonwealth, had DEQE selected Jet Line Services, Inc. for this contract, should have outweighed the questionable and unclear merits of several of DEQE's reevaluations.

B. Failure To Select Lowest Qualified Bidder for Air-Monitoring Services:

DEQE did not select the lowest qualified bidder for its acid rain/air-quality-monitoring contract. DEQE rated two consulting firms as both "able to provide a technically good product," yet awarded the contract to the firm submitting the higher of the two bids. As a result, DEQE spent at least \$21,500 more

than was necessary. This money could have otherwise been used to further DEQE's mission of preserving and enhancing the quality of the Commonwealth's natural resources.

On March 1, 1985, DEQE awarded a four-month \$142,000 "03" contract to Charles T. Main, Inc. of Boston for the purpose of establishing and operating an air-monitoring station in central Massachusetts. (The station was intended to periodically report on acid-rain deposition and air quality in the Commonwealth.) DEQE amended this contract twice, increasing the contract amount over 100 percent, to \$293,000, and extending the length of the contract one year, to June 1986. As of December 31, 1985, \$204,277 had been expended, and \$88,723 remained committed for future services.

As we stated, the contract was awarded to Charles T. Main, Inc.; however, another firm, Environmental Research Technology, Inc. (ERT) of Concord, Massachusetts, was identified through DEQE's own selection process as the lowest qualified bidder.

During July 1984, DEQE's Division of Air Quality Control established a selection committee responsible for designing and implementing a process for awarding DEQE's air-monitoring contract. The committee developed a grading system to evaluate the qualifications of interested firms. This grading system, however, did not take into consideration the cost of the consultants' services.

Four firms responded to the committee's RFP. Based upon an initial review of these firms' qualifications, the committee decided that only two were adequately qualified to perform the work: Charles T. Main and ERT. At this time, the committee informed the two other firms of their being dropped from further consideration and required the two qualified firms to make an oral presentation.

On November 27, 1984, the committee completed its selection process. Based upon final qualification scores of 104.75 for Charles T. Main and 102.50 for ERT, DEQE awarded the contract to Charles T. Main. The closeness of these scores indicates that both firms were (virtually) equally qualified to perform the work. In fact, the committee's December 6, 1984 final report to DEQE stated: "Both firms appear able to provide a technically good product."

Charles T. Main's proposed cost for services was \$131,800. ERT's proposed cost was \$110,300, or \$21,500 lower. The committee, however, considered but finally rejected cost of consultant services as the basis for its decision and consequently awarded no points for ERT's lower bid. In its December 6, 1984 report, the committee concluded:

The committee feels that the remaining price difference . . . between ERT and Main is outweighed by the superior program that Main proposes.

In our opinion, such a decision is contrary to the fiscal interests of the Commonwealth. Consultants should be selected in a manner that ensures the state's obtaining services that sufficiently meet its needs. By purchasing services of "superior" quality, DEQE has failed to ensure that taxpayers' monies are spent as economically as possible.

DEQE amended its original contract award of \$142,000 twice, raising the contract amount to \$293,000. Consequently, potential cost savings, had DEQE awarded the \$293,000 contract to ERT, may well have exceeded the initial proposed price difference of \$21,500.

Recommendations: DEQE should establish a standardized consultant selection process to ensure that all "03" contracts are awarded to the lowest qualified bidder. At a minimum, such a process should include:

1. A formalized system to evaluate a proposed consultant's qualifications on a consistent and equitable basis.
2. Pre-determined criteria to distinguish qualified from unqualified proposers.

3. Administrative controls to ensure that contracts are awarded to the lowest qualified bidder.
4. A requirement that, in the event that the lowest qualified bidder is not selected, the rationale for not selecting the lowest bid is fully detailed and documented.

Auditee's Response:

In evaluating the proposals, it is important to recognize that the project that the contractor was being asked to undertake was a research project. As such, it was even more important than usual that accurate data in sufficient quantity be gathered. Several factors related to the ERT proposal gave the department cause for concern that sufficient data would not be obtained. For example, DEQE staff['s] recommendation on this contract stated "C.T. Main presented a stronger field operation. . . someone would be at the site every day. Field personnel present at the site every day is a strong 'plus,' minimizing equipment downtime and improving the data capture rate." Also relating to this issue, "Half of the cost difference of \$21,500 between the two lease proposals is due to C.T. Main's new, larger shelter and climate control system. ERT would supply a smaller used shelter and climate control system. A new climate control system enables the shelter interior to remain within the required temperature range of 20 to 30 degrees celsius. Based on the Division of Air Quality Control's experience, a used shelter and climate control system is less reliable."

While it might be possible to adjust payment to the selected contractor if data capture rates were unacceptable, the basic mission of the contract would not have been carried out. It is important that department staff be allowed to exercise professional judgment suggested that the lowest bid not be accepted.

The draft SAO report also suggests that DEQE "did not take into consideration the cost of consultant's services." The department's documentation on the process, however, clearly indicates that cost was considered. The factors rated and the weight given follows:

1. Quality and responsiveness of proposal	15%
2. Technical approach	30%
3. Management approach	20%
4. General capabilities	15%
5. Costs	10%
6. General evaluation	10%

It is clear that cost was taken into consideration albeit at a low weight in the entire evaluation.

On the basis of the entire evaluation, C.T. Main scored highest considering cost at a 10% weight. Given the evaluation system used (which I believe to be appropriate to the situation) C.T. Main should have been and was selected.

Auditor's Reply: We still maintain that DEQE did not consider cost in its selection of this consultant.

As shown in DEQE's Bid Review Questionnaire, the selection committee was asked to evaluate the "costs" of each proposer based upon two criteria:

1. Has the proposal broken out the costs for each piece of equipment?
2. Has the proposal broken out the costs for personnel?

Consequently, the 10-percent weight factor given for cost reflects simply whether or not costs were itemized and has no bearing on the difference in the proposed cost amounts.

Any contention that ERT's project could be unreliable is, in our opinion, refuted by DEQE's own selection committee's findings. The committee distinguished only a 2-percent difference in its rating of the two firms' qualifications, and it reported to DEQE administration that "both firms appear able to provide a technically good product."

In our opinion, DEQE did not adequately consider cost in its selection of this consultant and consequently purchased services that exceeded the Commonwealth's needs.

C. Non-Competitive Procurement Practices: DPW purchases most of its "03" consultant services through an EOAF-authorized non-competitive selection process. Consultants are not required to compete for an "03" contract on the basis of price. Instead, DPW's selection of a consultant is primarily based on DPW's assessment of the consultant's ability to provide a service. The price of the purchased services is negotiated after a consultant has been selected. Because the process does not involve price competition, DPW cannot be assured that its price negotiations resulted in the purchase of quality service at the lowest possible price.

In our opinion, it would be more economical for DPW to employ competitive methods when it selects consultants. Such methods might result in significant cost savings that, in turn, could be used to further DPW's mission of ensuring the safety of highways and bridges throughout the Commonwealth.

Under Administrative Bulletin 82-1, Section 4.11, the Commissioner of Administration provides guidelines for the procurement of consultant services. EOAF regulations specifically require that (1) the selection process be "as competitive as practicable under the circumstances" and (2) "professional services for over \$40,000 must be purchased through the solicitation of formal written proposals from at least three qualified vendors." Section 4.113 of this regulation allows agencies to select consultants from a list of "prequalified" consultants. The list must be established through a process approved in writing by the Commissioner. But Section 4.113 provides no criteria either for agencies to follow when establishing a prequalification process or for the Commissioner to follow when authorizing such a procedure. The following discussion outlines DPW's current procurement practices and explains what we believe would be the benefits of encouraging price competition.

On September 12, 1983, the Commissioner of Administration approved DPW's prequalification process, in which an internal review board, composed of DPW engineers and division directors, evaluates prospective consultants as to relative size, capabilities, and experience. Once the board evaluates a consultant, the consultant is placed on DPW's prequalification list, which details the type of service that each consultant is qualified to provide.

When the board receives a request for consultant services that are expected to cost less than \$500,000, it selects from the current prequalification list a consultant who is then invited to submit a cost proposal. If DPW finds the consultant's charges unacceptable, it negotiates with the consultant. If

negotiations are unsuccessful, DPW will select another consultant from the pre-qualification list. According to DPW officials, it is rare that an acceptable contract cannot be negotiated.

For projects expected to cost \$500,000 or more, the internal review board selects three or more consultants and invites them to submit proposals. The proposals detail the scope of the work but do not include fee estimates. Only after one of the three consultants is selected, does DPW discuss cost. At that point, the selected consultant is no longer competing with other consultants for the contract. Thus the savings that usually result from an open, competitive process may be lost to the Commonwealth.

Many DPW consultant contracts utilize federal monies in addition to state appropriations and bond funds. The Office of Management and Budget (OMB) Circular A-102, Attachment O, requires that all procurement transactions "be conducted in a manner that provides maximum open and free competition." This circular also states: "Procurement procedures shall not restrict or eliminate competition." The OMB circular allows procurement by three methods: competitive sealed bids, competitive negotiation, or non-competitive negotiation. According to the OMB's Circular A-102, non-competitive negotiation is to be used as the procurement method of last resort when the other methods are "infeasible."

The Federal Highway Administration (FHWA) approved DPW's consultant selection process in March 1983. FHWA categorized DPW's method as a competitive negotiation process, i.e., consultants compete based upon their relative size, capabilities, and experience. The price is negotiated after DPW has initially selected a contractor.

In one area of consultant operations, DPW has had recent experience with the cost savings that may result from competitive bidding. A 1982 audit conducted by FHWA's Office of the Inspector General found that survey consultants were receiving as much as a 40 percent profit because DPW did not use price competition in its selection process. Because FHWA allowed survey consultants to earn only a 15 percent profit, the Inspector General recommended that DPW introduce price competition into its selection process, and DPW implemented the recommendation during calendar year 1984.

Since that time, survey contracts have been awarded on a competitive low-bid basis. The savings resulting from DPW's transition were immediate--8.4 percent in the first year. The following table illustrates the cost effectiveness of competitive bidding on survey rates in the first three years of its use:

Four-Year Comparison - Survey Awards

<u>Calendar Year</u>	<u>Average Per Diem*</u>
1983 - Not Bid	\$403.10
1984 - Bid	369.37**
1985 - Bid	389.06
1986 - Bid	391.30

* Per diem rate is based on the daily cost of a four-person survey party. Total contract dollars vary year-to-year based on the extent of work to be performed and the number of survey parties needed. Therefore, the average per diem charge is the most valid indicator of DPW's comparative cost for these services.

**8.4 percent ($403.10 - 369.37 = 33.73$. $33.73 \div 403.10 = 8.4\%$ cost savings)

In its survey division, DPW's per diem cost savings were so substantial in the first year of bidding that three years later, even with inflation, costs have not risen to the pre-bidding level. DPW might realize similar savings in its other divisions by requiring competitive procurement of consultant services.

In separate meetings that we held with state and federal officials, the DPW Director of Administrative Services and the FHWA Assistant Division Administrator agreed that increased competition in consultant selection is a feasible and desirable goal for DPW.

Recommendations: Since the potential for savings may exist, we believe that DPW should experiment with the introduction of price competition in the procuring of various consultant services. At a minimum, DPW should promote price competition by more effective use of its existing prequalification and negotiation processes. For instance, the negotiations of scope could involve several consultants after which equally ranked and equally qualified consultants would be invited to submit fee proposals.

Auditee's Response: DPW officials responded to this portion of our draft report by summarily rejecting all suggestions of price competition for the selection of design consultants. They argue that "the [auditor's] recommendation that the Department move to a price-based competition for these services is contrary to existing state policy. This policy is based on the work of the Special Commission Concerning State and County Buildings (often referred to as the Ward Commission), which opposed fee competition in the area of design."

DPW officials continue their response by detailing the methods used to negotiate cost with the selected consultant. They state: "We see no substantive difference between considering price before selection and considering price after [consultant] selection." DPW officials feel that their "practice of 'post-consideration' is in fact superior, primarily because the scope of the services needed is usually further defined through negotiations with the consultant, meaning that the Department has even greater assurance that it will get only the services it really needs and will therefore pay for no more than is needed to complete the tasks in the contract."

Furthermore, DPW officials suggest that we have incorrectly presented FHWA's position as supporting the selection of consultants based on cost alone. Finally, DPW officials take exception to our comparative example of the cost-savings realized in the purchase of survey services through a competitive-price process. They state: "Survey work is a labor-intensive, relatively low-skill service. The scope of work and the survey assignments are clearly detailed by the Department's Project Manager. This type of contract should not be compared to the purchase of services to provide a professional product. Each bridge or highway design undertaking is unique and is defined by a myriad of environmental, regulatory, Federal, legal and structural requirements." DPW opposes price competition in the selection of design consultants.

Auditor's Reply: Our draft report in no way suggested that DPW should begin to select consultants based on cost alone. We also note that DPW's adamant opposition to price competition is restricted, in its response, to the selection of design consultants, a process it perceives to be contrary to state policy. In fact, the laws resulting from the work of the Ward Commission (Chapter 579, Acts of 1980) explicitly exclude all horizontal design (virtually the only type in which DPW is involved).

Given that DPW would not be in violation of law or policy by using price competition, we stand by our opinion that price competition has potential cost benefit for the purchase of all consultant services, including design. DPW further argues that design services, because of their complexity, cannot be adequately scoped for price competition. Perhaps DPW could divert some of its considerable resources currently used in negotiating to enhance its in-house project-scoping capabilities.

We clearly do not recommend consultant selection based on cost alone. DPW has an extensive prequalification process whereby we believe it obtains significant knowledge of each consultant's potential to provide quality services. To reiterate our recommendation, we suggest that DPW invite three or more consultants who are, in DPW's judgment equally qualified, to negotiate and submit fee proposals on pre-scoped projects. We continue to believe that DPW could improve its existing procurement process by negotiating with more than one consultant and introducing the element of price competition.

DPW obligates more than \$14 million* annually for non-design consultant services in areas such as management, bridge rating and inspection, traffic operations, and research. While these services may lend themselves more easily to competitive methods, it is our contention that DPW should consider experimenting with price competition in all of its diverse consultant operations. If DPW's experience in the single (and, to date, isolated) area of survey is at all indicative, the potential for cost-savings to the taxpayer could be great.

*This figure is estimated from a list of all fiscal year 1985 DPW consultant contracts and does not include contracts for design, environmental impact statements, or survey services.

D. Massport's Inefficient and Uneconomical Management of the State Transportation Building: EOAF's Division of Capital Planning and Operations (DCPO) delegated its responsibility to manage the State Transportation Building to the Massachusetts Port Authority (Massport) by non-competitively awarding Massport a \$2.5 million "03" consultant contract. DCPO's rationale for awarding this contract to Massport was based on DCPO's assumption that pending legislation, House Bill 6797, would require DCPO to contract with Massport for these building management services. Although this bill was not enacted, it was subsequently refiled and signed into law. (This legislation appears as an out-

side section in the fiscal year 1985 General Appropriation Act and Chapter 240 of the Acts of 1984.) Our audit of Massport's performance under this contract, which was subsequently renewed for \$5.1 million on July 1, 1984, revealed instances of (a) uneconomical and inefficient sub-contracting practices, (b) excessive and duplicative building-maintenance costs, and (c) unnecessary administrative costs. Based on our analysis, we believe that the Commonwealth might have realized a cost savings of approximately \$1.2 million if DCPO had directly managed the building.

DCPO is responsible for the management, maintenance, and capital repair of many state-owned buildings and properties. When DCPO awarded an "03" contract on November 18, 1983 to Massport, DCPO delegated to Massport the responsibility for managing and maintaining the then newly constructed State Transportation Building. DCPO awarded the building-management contract non-competitively by requesting from the Commissioner of Administration a waiver of EOAF's "03" competitive-selection requirements.

The request was made in a November 14, 1983 memorandum from the Deputy Commissioner of DCPO to the Commissioner of Administration. In this request, the Deputy Commissioner stated that an emergency situation existed based on the fact that House Bill 6797, which would effectively have required DCPO to contract with Massport, was proceeding through the Legislature. The Deputy Commissioner felt that it was important to initially enter into a contract with Massport so that DCPO could avoid having to terminate a contract with another building manager when this legislation was passed. In addition, DCPO was concerned with its ability to competitively bid for this contract given the fact that all potential bidders were aware of this pending legislation.

On November 18, 1983, the Commissioner of Administration approved DCPO's waiver request. Later that day, the building-management contract was awarded to Massport.

Subsequent to DCPO's awarding of the building-management contract to Massport, the Legislature, through language in the annual appropriation acts, stipulated that Massport continue to manage the State Transportation Building through fiscal years 1985 and 1986. Massport's "03" contract was renewed for these two fiscal years in the amounts of \$5,176,661 and \$5,865,522, respectively. In the appropriation language, the Legislature required that DCPO closely monitor Massport's performance under the contract and submit formal evaluations on an annual basis. The Legislature also required the state's Inspector General's Office to review and report on the building-management contract as well as DCPO's evaluation report.

On July 11, 1985, the Inspector General submitted his report to the Legislature and cited numerous objections to the building-management arrangement between DCPO and Massport and, more generally, to tenants' management of buildings. The report also addressed DCPO's proposal to delegate many of its oversight responsibilities to EOTC, which, like Massport, is a tenant in the State Transportation Building.

The Inspector General's report noted the inherent conflict that exists in Massport's dual role as both tenant and building manager:

Giving control over the management of State office buildings to tenant agencies would make it more difficult to balance the tenants' needs and desires with other broader-based concerns, such as fiscal prudence.

The report also cited that such an agreement "undermines the Ward Commission's concept of centralized management of the state's major office buildings by a professional, single-purpose agency . . . [and] creates an undesirable precedent for turning other State office buildings over to particular agencies which wish to control their office space."

Illustrating the adverse financial effects of a tenant-manager conflict-of-interest, the Inspector General's report points to the building's unexpectedly high operating costs:

In fact, my office analyzed the budget from the Transportation Building's first year of operation and found it to be above average in comparison with other major office buildings in downtown Boston, when in fact, operating costs of a brand-new building with a state-of-the-art heating system should have been lower than average.

During 1986, the Inspector General filed legislation (House Bill 123), which, if passed, would have transferred the responsibility for managing the State Transportation Building to DCPO's Bureau of State Office Buildings (BSOB), effective July 1, 1987. The legislation would have also required the use of an open, competitive process to select building-service (maintenance, cleaning, security, etc.) contractors. The bill was not passed by the Legislature. (A copy of House Bill 123 appears as Exhibit II of this report.)

In our opinion, the responsibility for management and ongoing oversight of the State Transportation Building properly belongs to BSOB. BSOB, which was restructured and placed within DCPO by the Ward Commission's reform laws of 1980 (Chapter 579 of the Acts of 1980), has as its sole purpose the responsibility for managing the state's major office buildings. BSOB's successful ongoing management of the State House; the John W. McCormack and Leverett Saltonstall State Office buildings; and the Erich Lindemann, Charles F. Hurley, and Registry of Motor Vehicles buildings (all of these buildings are located in downtown Boston) is, in our opinion, ample evidence of BSOB's building-management capabilities.

In its November 14, 1983 letter, DCPO explained that BSOB was not utilized as the manager of the State Transportation Building, because DCPO and BSOB lacked available staff to assume direct management of the building. Given that DCPO had \$2.5 million available under the first contract to acquire Massport's services, these funds, in our opinion, could have been used to hire additional employees and thus permit BSOB to assume management of the State Transportation Building.

Our audit of Massport's performance as building manager for the period January 1, 1984 to June 30, 1985 revealed various uneconomical and inefficient practices. As shown in the table below, unnecessary costs totalled approximately \$1.2 million--costs which we believe could have been avoided had BSOB managed the building rather than Massport:

Uneconomical and inefficient sub-contracting practices	\$ 421,319
Excessive building maintenance costs	262,908
Unnecessary administrative costs*	511,448
	<u>\$1,195,675</u>

*Includes Massport's management fee of \$319,000

Uneconomical and Inefficient Sub-Contracting Practices: Massport did not select the lowest qualified bidder in 3 of the 10 building-service sub-contracts that we reviewed. The awards were based on a procurement process involving the public solicitation of proposals and an evaluation of each responding firm's qualifications. By Massport's own descriptions, this procurement process was not designed to select the lowest qualified bidder but rather to select the firm that would provide the most competent service.

In a December 15, 1983 internal Massport memorandum, the selection process was described as a "consensus" approach, in which a selection committee would review proposers' qualifications and select a "preferred contractor" for each contract. Negotiations were then held between Massport and each "preferred contractor." Massport awarded 2 of these contracts, based on such factors as the vendor's providing "superior security services," and "the most competent cleaning service." In no instance did Massport identify the lowest qualified bidder. In fact, based on our review of these 3 contracts, we found that Massport awarded 1 contract to a firm submitting the highest proposed price.

Although Massport's sub-contracting practices do not fall within the jurisdiction of EOAF's "03" regulations, we believe that any time taxpayers' monies

are used, such monies should be expended in the most economical and efficient manner possible. Massport should have selected the lowest qualified bidders for its building-services sub-contracts rather than the more costly "superior" vendors. In our opinion, such a move would have resulted in cost savings to the Commonwealth totalling \$421,319:

<u>Services Contracted For</u>	<u>Selected Proposal</u>	<u>Lowest Qualified Proposal</u>	<u>Potential Cost Savings*</u>
Janitorial Services	\$605,181	\$419,396	\$185,785
Security Services	478,296	249,378	228,918
Window-Cleaning Services	39,186	32,570	6,616
			<u>\$421,319</u>

*For comparative purposes, potential cost savings are based upon differences in proposed costs rather than actual costs. Total actual costs of the three selected vendors exceeded their total proposed costs by \$108,813 or 10 percent.

By contrast, the Superintendent of the BSOB, who is responsible for managing the other six major state office buildings located in Boston, told us that unless the BSOB receives poor references on a particular firm, the lowest qualified bidder is always selected.

The three contracts for which Massport did not select the lowest qualified bidder are summarized in Exhibits III through V. Massport's response to the issues raised in this section are presented after each exhibit.

Excessive Building-Maintenance Costs: Between January 2, 1984 and June 30, 1985, Massport, under Contract No. G-382, paid \$582,238 to Balco, Inc. of Newton for around-the-clock maintenance services at the State Transportation Building. Balco's maintenance staff included a dockmaster, carpenter/locksmith, painter, plumber, two electricians, and three heating, ventilation, and air conditioning (HVAC) technicians. The plumber, electricians, and HVAC technicians are all licensed tradesmen.

Our analysis of Balco's work orders indicated that Balco's maintenance staff was overqualified and underutilized. Furthermore, staffing exceeded levels necessary to adequately maintain the State Transportation Building. For these reasons, we believe that BSOB could have provided the same services more efficiently and economically, and saved the Commonwealth approximately \$262,908.

We reviewed four months of work orders to determine if the maintenance staff was utilized economically and efficiently. Specifically, we examined 479 work orders completed during August and November 1984 and during January and May 1985. We believe that 365 (or 76 percent) of these work orders could have been performed by non-licensed skilled laborers. The details of the work-order review are provided below:

- o Of the 127 work orders for electricians, 100 (79 percent) required changing light bulbs, resetting circuit breakers, plugging in electrical items, or moving chairs.
- o Of the 123 work orders for HVAC technicians, 78 (63 percent) required only adjusting thermostats or air vents. An additional 17 (14 percent) required various non-HVAC services such as installing window blinds, repairing ashtrays, and moving furniture.
- o Of the 141 work orders for the carpenter/locksmith, 47 (33 percent) required making keys. An additional 60 (43 percent) required various non-skilled services such as adjusting door handles, moving file cabinets, opening windows, and checking toilets.
- o Of the 53 work orders for the plumber, 29 (55 percent) required clearing sink and toilet drains.
- o Of the 34 work orders for the painter, 34 (100 percent) did not require expertise. Orders were submitted for repairing loose cabinets, painting scratched doors, installing signs, polishing stainless steel doors, and repairing walls.
- o The dockmaster had only 1 work order completed during the four months reviewed. However, Massport officials informed us that the dockmaster's primary responsibility is to maintain the loading dock area, and therefore his work would not be reflected in the work orders.

The Chief Engineer for the State Transportation Building, who is responsible for building maintenance, stated that the maintenance staff is responsible

for more than just carrying out work orders. He said that they also help monitor and maintain the building's mechanical equipment and spend some time making minor renovations to tenant office space. The Chief Engineer added that Massport charges back the requesting tenant for the cost of having Balco staff make office renovations.

Nevertheless, the level of professional staffing contracted by Massport to maintain the State Transportation Building was, in our opinion, excessive and costly. Although we realize that some building-maintenance tasks require the skills of a licensed tradesmen, using full-time licensed tradesmen to perform routine unskilled labor, such as changing light bulbs, clearing drains, and moving chairs, is an inefficient and uneconomical use of licensed technicians. We also question the necessity of Balco's maintenance staff's monitoring and maintaining the building's mechanical equipment. Massport currently has service contracts that provide servicing as well as routine preventive maintenance to most of the mechanical equipment in the building.

Also, using the maintenance staff for office renovations is, in our opinion, a convenience provided to building tenants. It does not justify maintaining a full-time staff of licensed tradesmen. Finally, Massport's (and the state's) cost for maintaining this staffing level was exorbitant. Based on Balco's monthly charges under this contract, the average cost for these tradesmen ranged from \$44,148 per year for the painter to \$70,200 per year for each of the electricians and the plumber.

The following represents a salary breakdown for the employees that BSOB would need to replace the Balco staff. The annual salaries are based upon pay grades in union contracts (State Employees' Bargaining Units 2 and 3) for employees with five or more years experience. Fringe benefit costs, estimated

at 25 percent of direct salaries by the Division of Personnel Administration, were added to these salaries to determine total annual costs. These total costs were then projected over an 18-month period (i.e., the period covered by Contract No. G-382) to determine what the total building-maintenance costs to the Commonwealth would have been under BSOB's management.

<u>Maintenance Position</u>	<u>Staff Size</u>	<u>Annual Salary Plus 25% Fringe</u>	<u>Total (18) Month Cost</u>
Electrician	1	\$26,159	\$ 39,239
Plumber	1	26,159	39,239
HVAC Technician	2	26,159	78,477
Skilled Laborer	5	21,650	162,375
	<u>9</u>		<u>\$319,330</u>

Comparing these costs to Massport's total payments to Balco of \$582,238, we believe that the difference, \$262,908, was unnecessarily spent.

Recommendations: Based upon our analysis, we believe that the State Transportation Building could be more economically and effectively maintained by BSOB, using a mixed staff of licensed tradesmen and skilled laborers, as shown in the table above. The licensed tradesmen could handle work orders and other duties requiring specialized skills. The remaining general maintenance activities would be performed by the skilled laborers. In this way, the building could be maintained just as effectively but at a lesser cost.

Auditee's Response: Massport officials do not agree with our analysis of building-maintenance costs. Their specific remarks appear below:

- a. The auditors' analysis of work orders, in and of itself, is insufficient and misleading because the work orders do not represent all of the work accomplished by the mechanical or electrical work force. The work orders for the period covered reflect only complaints from the tenants and agency representatives. They do not represent basic preventative and routine maintenance and the extensive amount of tenant alteration work occurring at that time. When the auditors visited the Building Management Office, they were advised by the Chief Engineer to review tenant alteration requests and the daily log, in order to obtain a complete picture of

the work that was done by the maintenance staff. The report discusses only an analysis and review of the work order files and therefore presents a misleading picture.

- b. The Balco maintenance staff are on a 40 hour per week basis. Accordingly they were paid for their base time regardless of the type of maintenance work they were performing. Therefore, electricians were used at times to perform other tasks, thereby minimizing idle or wasted time when awaiting parts or shut down time to do electrical work that required their expertise. Furthermore, work orders that appear to be no more than a changing of a light bulb might have indeed required a licensed electrician, because the problem might have been the ballast or the wiring.

Massport further stated:

References to the workforce moving furniture, hanging pictures, and doing other non-skilled work to assist tenants are inappropriate. During the move-in period of the building, most tenants did not have manpower available to them, within their own staff, to do this type of work. The Building Management Office provided this type of service to the tenants in most cases on a chargeback basis; that is the tenant paid the actual rate that was paid to the service company (Balco).

Also at this time, the maintenance workforce was responsible for completing many of the punchlist items which were left after the original construction of the building. As is the case for any new building, this task, along with additional items discovered as tenants began occupying the building, was substantial.

- c. To the best of Building Management's (Massport's) knowledge, no one from the BSOB visited The Transportation Building to do a complete and thorough analysis of a staffing plan.

Massport further stated:

The report also indicates a lack of understanding of proper operational procedures for this unique/one-of-a-kind building. For example, there are special "dead band" thermostats throughout the building that are critical to the proper distribution of heating, ventilation, and air conditioning. This is the type of device which must be adjusted only by a licensed technician. Other examples of sensitive technical work requiring licensed personnel include the activation of the electrical tap mate system below the floor or any dealings with the 277 volt lighting system.

- d. It is debatable if the 25% factor specified in the report for fringe benefits for the BSOB staffing analysis is sufficient. However, when utilizing this 25% fringe benefit factor, the electrician's yearly rate of \$26,159 translates to an annual salary of \$20,927 ($\$20,927 \times 125\% = \$26,159$). This equates to a rate of \$10.06 per hour for the building's electrician. It is doubtful

that a qualified licensed electrician can be retained at this rate.

- e. The per square foot annual rate for maintenance of \$.41 per square foot during the time in question favorably compares to the Building Owners and Managers Association Report for 1985 which identifies a per square foot annual cost for repair and maintenance for a similar size building of \$1.10 per sq. foot.
- f. The BSOB staffing plan assumes that Class A type services that Massport provides at The Transportation Building, such as tenant alteration work, would not be done by the Building Management Office.
- g. The report's analysis of state employee rates against contract price from Balco is not a fair analysis. A complete analysis should include a discussion of the value of the overhead and profit that is paid to the contractor in a staffing plan as presently exists at The Transportation Building. The most significant value of paying this overhead and profit is the ability of the Building Manager to maintain an arm's length relationship with the maintenance workforce. Working through Balco, Building Management has the flexibility to readily transfer or terminate maintenance staff who do not perform up to the Class A office building standard. It also does not appear to consider pension costs, which are not fully funded by the State, nor has there been any consideration for overtime payments which would be necessary for sick leave and vacation coverage.
- h. The analysis should deduct from the Balco contract price the value of the work that was done on a chargeback basis for tenants. The analysis does not consider the dollar value of this work, either by deleting it from the Balco contract price or by adding it to the proposed BSOB cost of staffing the building. The dollar value of chargebacks performed by the maintenance staff and billed to tenants in Fiscal 1985 was \$32,570. Extrapolating this number to the 18-month period covered by the audit examination results in a value of \$48,855.
- i. In the Management Services Agreement, Massport was charged to operate The Transportation Building at a Class A office standard, in direct contrast to general levels of current state office building operations.

Auditor's Reply: Our replies to each of Massport's nine responses follow.

- a. As noted in our finding, we considered all work performed by the maintenance staff including work orders, routine preventive maintenance, and tenant alterations. These latter two job functions, however, do not support Massport's need for a full-time staff of highly paid licensed technicians.

1. Massport maintains at least 8 major equipment service contracts which are funded by the state and which provide routine preventive maintenance as well as emergency-repair services for most of the building's equipment. In our opinion, these contracts preclude the need for a full-time staff to perform preventive maintenance.
2. Because tenants must pay for "tenant alteration" work anyway (through "chargebacks" to Massport), we believe that these services would be more economically provided through tenants' use of independent contractors on an as-needed basis. We do not believe that tenant alteration work, for which Massport charged back \$32,570 during fiscal year 1985, adequately justifies the need for the full-time Balco maintenance staff.

b. We believe that Massport's response supports our contention that the maintenance staff were underutilized and overqualified for services they performed. Clearly, the work performed by the maintenance staff, as detailed in Massport's response, could have been performed more economically by skilled laborers as opposed to licensed technicians. Finally, in each instance where we identified that licensed electricians were used to change light bulbs, the work orders we reviewed did not indicate that a problem existed with the ballast or the wiring. If such a problem existed, it should have been reflected on the work order.

c. Our proposed maintenance staffing was based on our review of the maintenance work being performed by the Balco staff and on our conversations with the Superintendent of the BSOB. Our proposed staffing level would not reduce the number of maintenance personnel but rather would change the technical composition of the work force. Further, our analysis considered the technical complexity of the building's heating, ventilation, and air conditioning (HVAC) system. As noted in our finding, we agree with Massport that the building would require two HVAC technicians. We also agree that the building should have a staff electrician. In short, we believe that our proposal would result in a more economical and efficient operation.

d. As stated in the report, the salaries used in our analysis are actual salaries for state employees in bargaining units 2 and 3 who have five or more years of experience. The 25-percent fringe rate was added to these employees' salaries (an estimate of fringe benefit costs which has been determined by the Division of Personnel Administration) because these would be the additional costs incurred by the Commonwealth were these staff hired as state employees.

e. Our audit finding compares Massport's actual costs for maintenance staff with the cost of our proposed BSOB staffing. The per square foot cost figures provided by Massport in its response have no relevance to this issue. Once again, our analysis revealed that a significant cost savings could be realized if BSOB maintains the building.

f. We agree with Massport's contention on this matter. As previously stated, we believe that maintaining a highly skilled maintenance staff to perform intermittent tenant alterations is an uneconomical and inefficient management practice.

g. We realize that having the opportunity to have an arm's length relationship with employees has its merits. However, we believe that whenever taxpayers' monies are being used, it is not appropriate to compromise fiscal prudence for convenience.

Massport's contention that our analysis did not incorporate pension costs is unfounded. Each of our proposed maintenance staff's actual salaries was increased by 25 percent, to take into account additional costs above salaries that the Commonwealth would incur.

Finally, Massport's contention that we did not consider overtime payments resulting from sick leave and vacation coverage is not correct. We do not believe that there would be a need to incur these costs since BSOB can rely upon its pool of maintenance staff to cover for these types of absences.

h. Massport's assertion that it received \$32,570 in "chargebacks" for tenant alteration services is not necessarily indicative of cost savings to the Commonwealth. Most of the building's tenants are state agencies and authorities and, as such, would have used public monies to pay for these tenant alterations.

i. Massport contends that its additional costs are attributable to the fact that it is required to "operate The Transportation Building at a Class A office standard, in direct contrast to general levels of current state office building operations."

While this requirement is contained within Massport's contract with DCPO, it is not included in the Appropriation Acts.

Massport's position that BSOB would not be able to manage the building at a level of quality consistent with the building's needs, is unsupported. To the contrary, BSOB's successful ongoing management of the 6 other major state office buildings is, in our opinion, ample evidence of its building-management capabilities.

Unnecessary Building Administration Costs: Between January 2, 1984, and June 30, 1985, Massport received state reimbursements totalling \$847,474 for administrative expenses that it incurred while managing the State Transportation Building. Had BSOB assumed the administration of this building over the 18-month start-up period, we believe that total administrative costs would have been \$336,026, saving the state \$511,448.

	Actual Costs Under Massport	Projected Costs Under BSOB	Projected Savings
Massport's Management Fee	\$319,000	-	\$319,000
General Administration Payroll	221,075	\$144,563	76,512
Maintenance Administration Payroll	211,561	95,625	115,936
Tenant Services Payroll	95,838	95,838	-
	<u>\$847,474</u>	<u>\$336,026</u>	<u>\$511,448</u>

First, the \$319,000 management fee paid to Massport was for indirect general and administrative overhead costs associated with the management of the building. Since BSOB is an agency specifically established to manage state office buildings, we believe that its existing resources could absorb any increase in indirect costs resulting from its management of the building. Second, based on our discussions with the Superintendent of BSOB and on our review of Massport's maintenance work orders, BSOB could have managed the building with fewer administrative staff, saving an additional \$192,448.

The following chart compares Massport's on-site administrative staff to the staff that we believe BSOB would need to manage the building:

	<u>Massport</u>	<u>BSOB</u>
General Administration:		
General Manager	X	
Assistant General Manager	X	X
Accountant	X	X
Executive Secretary	X	X
Maintenance Administration:		
Chief Engineer	X	X
Mechanical Supervisor	X	
Electrical Supervisor	X	
Secretary	X	X
Tenant Services	X	X

General Administration: An on-site General Manager would not be required under BSOB's management of the building. The Superintendent of BSOB told us that he assumes the General Manager's responsibilities for all of the major state office buildings under his control. At each of these buildings, daily administrative responsibilities are handled by an Assistant Superintendent/General Manager who is also a licensed mechanical engineer.

Maintenance Administration: The Superintendent of BSOB told us that a single mechanical engineer normally handles the maintenance administration function at each of the buildings under his control. On-site electrical and mechanical supervisors are not needed. If a problem arises at a particular build-

ing, such experts may be temporarily provided by BSOB's pool of licensed technicians to assist in resolving the problem. Based on our analysis of work orders submitted by Massport's mechanical and electrical sub-contractors (see previous section of this report titled "Excessive Maintenance Costs"), we can find no justification for the need of these additional supervisors. Consequently, we believe that Massport's employment of full-time mechanical and electrical supervisors is unnecessary.

Tenant Services: The State Transportation Building's tenant service costs would remain at approximately the same level under BSOB's management.

The following represents a salary breakdown for the employees that BSOB would need to manage the State Transportation Building. The annual salaries are based on average BSOB salaries for these positions as provided to us by BSOB's Superintendent. Fringe benefit costs, estimated at 25 percent of direct salaries by the Division of Personnel Administration, were added to salaries to determine total annual costs. These amounts were projected over an 18-month period to determine what the total administrative costs to the Commonwealth would have been under BSOB's management of the Building.

<u>Position</u>	<u>Annual Salary</u>	<u>Annual Salary Plus 25% Fringe</u>	<u>18-Month Total Cost</u>
Assistant Superintendent	\$37,000	\$46,250	\$ 69,375
Mechanical Engineer	33,000	41,250	61,875
Accountant	22,100	27,625	41,438
Secretary	18,000	22,500	33,750
Secretary	18,000	22,500	33,750
Tenant Services Staff			95,838*
			<u>\$336,026</u>

*This amount represents Massport's actual cost for these services.

Comparing these costs to Massport's total administrative cost of \$847,474, we believe that \$511,448 was unnecessarily spent.

Recommendations: Again, we recommend to the Legislature that it reconsider House Bill No. 123, which would transfer the management responsibility for the State Transportation Building to the Bureau of State Office Buildings. We believe that such a transfer would save the state money. House Bill 123 appears in its entirety as Exhibit II in this report.

Auditee's Response: Massport does not agree with four points that we made in the audit finding. Excerpts from Massport's response appear below:

- a. It should be understood that the management fee serves to cover many direct and indirect costs of operating the building that are incurred by Massport's administrative and support departments such as Legal, Engineering, Budgeting, Accounting, Management Information Systems, and, of course, Audit. No matter who is responsible for management and operation of The Transportation Building, these types of costs will be incurred if the building is properly managed. It is simply incorrect to assert that the BSOB would have incurred no additional indirect costs or overhead had it managed The Transportation Building. The BSOB has assumed responsibility for numerous additional properties in recent years, and given the unique qualities of The Transportation Building, it is unreasonable to presume that they could have assumed responsibility for this building without incurring additional costs.
- b. According to the report, BSOB provided the auditors with recommendations for administrative and maintenance staffing. Due to the unique nature of The Transportation Building, it is difficult to understand how one could determine the staffing needs, functions and operations of this building without intimate knowledge of the building. The recommendation of the BSOB clearly does not incorporate the Class A standard under which the building is charged to operate nor does it recognize the other specialized functions of the building, such as the intense involvement of the management staff in the retail development of the building.
- c. Again, referring to the Building Owners and Managers Association Report on 1985 costs, the average administrative costs per square foot for a Boston office building the size of The Transportation Building is \$.64 per square foot. Annualizing the actual Massport cost for the 18-month period to a one-year period also yields a per sq. foot cost of \$.64 per sq. foot.
- d. The administrative staffing plan for The Transportation Building is the product of analysis by Massport's Administrative and Engineering staffs. The unit cost of administration at similar office buildings in Boston were considered along with the unique features and services that were planned for The Transportation Building such as the extensive level of office services.

Auditor's Reply: Our replies to each of the agency's responses follow.

a. Massport believes that no matter who is responsible for managing the State Transportation Building, the building's manager will incur indirect expenses in managing the building. However, we believe that BSOB's existing resources would be sufficient to absorb any additional indirect costs as a result of managing the State Transportation Building.

b. The only difference between our proposed staffing and the existing administrative staff utilized by Massport is the elimination of the mechanical and electrical supervisors, and the building's General Manager.

We eliminated the two supervisor positions based on our analysis of mechanical and electrical work orders. We found no justification for these additional supervisors. Further, the responsibilities of these supervisors would be assumed by the proposed Assistant General Manager and the Mechanical Engineer. BSOB officials informed us that both of these individuals assigned to this position would be licensed mechanical engineers and would be capable of fulfilling all supervisory responsibilities.

The General Manager's responsibilities would be assumed by BSOB's Superintendent. This individual acts as General Manager for all buildings managed by the BSOB.

We have no reason to believe that BSOB would provide substandard management of the building. We believe that Massport's claim to the contrary is unsupported.

Massport's Chief Engineer informed us that the agency's role in retail development involved, for the most part, reviewing and approving the plans and specifications for retail space.

We believe that the Assistant General Manager, who would be assigned by BSOB, would be a licenced Mechanical Engineer, and could assume these responsibilities.

c. Massport's response which details the average administrative costs per square foot for a Boston office building is irrelevant to the finding. Our analysis involved a comparison between administrative costs of Massport and the BSOB.

d. Again, we do not believe that the administrative cost to manage other office buildings in Boston is relevant to the audit findings. Our analysis was between Massport and the BSOB. It should be noted that our proposal included a cost for office services that is equal to Massport's costs of providing these services.

E. Failure To Follow Competitive-Bid Procedures: Our audit revealed that, during fiscal year 1985, the Department of Public Health (DPH) and the Department of Environmental Quality Engineering (DEQE) violated EOAF's "03" regulations when they awarded 16 contracts, totalling \$3.5 million, without following competitive-bid procedures. We found no indication that these contracts were publicly advertised or that bids and proposals were ever solicited. In our opinion, this represents a poor procurement practice because the agencies failed to ensure the economical use of taxpayers' monies. EOAF's Administrative Bulletin 82-1, Section 4.11, requires that all "03" contracts for professional services having a maximum obligation of \$40,000 or more, be awarded "pursuant to a selection procedure involving the public advertisement [of the contract] . . . and the solicitation of formal written proposals from at least three qualified vendors." Non-professional contracts having a maximum

obligation over \$500 must be awarded "pursuant to a competitive bidding procedure involving the solicitation of bids by publicly advertising [the contract]." This regulation does not apply to renewals of previously authorized contracts or to those contracts that, in EOAF's determination, should have the requirement waived. (Administrative Bulletin 82-1, Section 4.11, appears as Exhibit VI.)

Contrary to EOAF regulations, DPH non-competitively awarded 7 "03" contracts, totalling \$2,421,354 during fiscal year 1985. Each of these contracts were for professional services, and each carried a maximum obligation in excess of \$40,000. During the same period, DEQE non-competitively awarded 9 "03" contracts totalling \$1,088,691. Each of these contracts were for professional services carrying maximum obligations in excess of \$40,000. The table below analyzes these contracts by type and amount:

Department of Public Health

<u>Type of Contract</u>	<u>Number</u>	<u>Amount</u>
Dental Services	2	\$1,901,118
Medical-Related Services	5	520,236
	<u>7</u>	<u>\$2,421,354</u>

Department of Environmental Quality Engineering

<u>Type of Contract</u>	<u>Number</u>	<u>Amount</u>
Admin. and Environ. Support Services	6	\$ 959,286
Administrative Services	3	129,405
	<u>9</u>	<u>\$1,088,691</u>

We found no documentation to show that these contracts had been publicly advertised or bid prior to their award by DPH and DEQE. In addition, the contracts were for new services, i.e., they were not renewals of previously authorized contracts. Finally, we found no indication that EOAF had "waived" its competitive-procurement requirements for these contracts.

All of these contracts were approved by the Comptroller's Division, which did not detect violations of EOAF's competitive-procurement regulations.

Recommendations: We recommend to DPH and DEQE that a standardized consultant-selection process be established to ensure that all "03" contracts are awarded in compliance with the EOAF regulations requiring competitive-bid or proposal procedures. At a minimum, such a process, at the agency level, should include:

1. A system for documenting the evaluation of consultants' qualifications consistently and equitably so as to indicate that the evaluations were performed.
2. Pre-determined criteria to distinguish qualified from unqualified proposers.
3. Administrative controls to ensure that contracts are awarded through public advertisement and solicitation of bids or proposals as specified in EOAF regulations.

Auditee's Responses: DPH officials responded to our draft report by stating that 3 of the contracts for medical-related services were renewals of contracts awarded in compliance with EOAF regulations through a Request for Proposal process. DPH officials stated that the other two contracts in this category were with individuals and, as such, "the Department did not believe there was a need to issue an RFP for individual rather than organizational consultants, with maximum obligations exceeding \$40,000." As regards the two contracts for dental services, DPH officials explain that in fiscal year 1984 the Legislature transferred the administration of the dental program for Department of Mental Health clients to DPH. DPH decided to renew the existing contracts for the first year of their administration without increasing the maximum obligations. They point out that "such renewal is specifically authorized by Section 4.113 of Administrative Bulletin 82-1."

DEQE officials responded to our draft report by stating that they did not believe that the six contracts for administrative and environmental support

services required competitive bidding. They state that the consultant firm is a "quasi-state agency" based on its organization, its non-profit status, and its allowable indirect cost rate. DEQE views the firm as a "quasi-state agency," and, as such, the firm is exempt from the competitive-procurement requirement. As regards the three contracts for administrative services, DEQE officials believed: ". . . that competitive bidding procedures were not applicable to 03 contracts for personal services . . ." They stated that salaries were less than the \$40,000 limit, but total contract costs with travel and fringe exceeded the limit. They stated that when EOAF clarified the regulation for them in June 1986 they began to comply.

Auditor's Reply: DPH was not able to provide us with documentation of the competitive process used to procure the 3 medical-related and 2 dental service contracts. There was no adequate documentation presented to us during or since the audit that would indicate that these contracts were renewals of competitively procured contracts. In fact, in each of the 5 cases the AF-4 indicated that the contract was for a new service rather than a renewal.

We believe that the EOAF regulation is clear in its requirement of competitive procedures for all contracts exceeding \$40,000. Officials at EOAF support our interpretation that contracts with individuals are in no way exempted under this regulation.

We reject the argument that the consulting firm (NEIWPCC) providing administrative and environmental support services at DEQE is a quasi-state agency. Nonprofit status, low overhead rates, and grants from state agencies in no way transform an organization into a quasi-state agency. The contracts for these services should have been competitively awarded.

3. DEQE's Uneconomical Use of a Consultant as a Fiscal Conduit

During the 30-month period July 1, 1983 through December 31, 1985, DEQE awarded, on a non-competitive basis, 26 "03" contracts, totalling approximately \$3.2 million, to the New England Interstate Water Pollution Control Commission (NEIWPCC), a nonprofit organization located in Boston. As of December 31, 1985, DEQE had expended approximately \$1.8 million. Under the contracts, NEIWPCC was to provide full- and part-time personnel who would perform routine administrative and environmental services at DEQE's offices. In our opinion, the use of NEIWPCC as a fiscal conduit was unnecessary. Furthermore, we believe that NEIWPCC personnel received excessive compensation. As a result of these uneconomical practices, DEQE had expended, as of December 31, 1985, approximately \$386,000 unnecessarily.

Our review of the "03" contracts revealed that NEIWPCC provided a simple payroll mechanism that allowed DEQE to hire additional state employees without its having to request additional "01" or "02" positions. For this duplicative, unnecessary payroll service DEQE paid NEIWPCC \$118,807 during the audit period. Documentary and testimonial evidence indicates that the 33 full-time and 28 part-time individuals employed under the 26 contracts were hired, supervised, and evaluated by DEQE, but compensated through NEIWPCC. Had DEQE contracted directly with each of the consultants, DEQE's own payroll section, which is staffed by 6 full-time employees, could have paid the consultants and thus saved the \$118,807 in administrative fees.

In addition to incurring unnecessary administrative costs, DEQE paid the consultants approximately \$267,000 more than what is authorized under Administrative Bulletin 82-1, Section 4.076:

Services equivalent to the duties of positions within the Commonwealth's classification plan [or] any service which corresponds substantially with the scope of duties of a position in the Commonwealth's

classification plan may be compensated at a rate not exceeding twenty-five percent above Step I of the salary schedule as provided in Massachusetts General Laws, Chapter 30, Section 46.

(The additional 25 percent is widely regarded as payment in lieu of fringe benefits.)

As of December 31, 1985, the 23 full-time consultants employed under these "03" contracts performed services within the scope of state positions: 5 consultants held senior management positions, 7 held accounting and administrative support positions, and 11 held environmental technician positions. Regular DEQE employees hold identical positions.

DEQE improperly compensated all of the consultants employed under the contracts when it based their compensation on state employee union wages rather than on rates shown in the General Salary Schedule (see Chapter 30, Section 46, of the General Laws). State employee union wages are (generally) higher than salaries shown in the General Salary Schedule.

In addition to receiving excessive compensation, the consultants were granted pay raises that other state employees paid under the General Salary Schedule were not entitled to receive. During the 30-month audit period, state employees whose compensation was based on salary rates in Chapter 30 of the General Laws received three pay raises totalling 14 percent over the 30 months. Over the same period, 10 consultants received salary increases ranging from 19 percent to 70 percent:

- o One consultant received seven pay raises (including two retroactive raises) over the 30 months and increased his annual salary from \$27,871 to \$41,399.
- o Another consultant received one promotion and five pay raises and increased her annual salary from \$15,928 to \$26,685.

The salary increases for the 10 consultants averaged 42 percent over the 30 months (from \$23,474 to \$33,261).

Finally, the 33 full-time consultants employed under the NEIWPCC contracts received from DEQE an excessive fringe benefit package, which provided for vacation, sick, personal, and holiday pay; medical insurance; and FICA, unemployment, and workmen's compensation tax payments. DEQE also funded individual retirement accounts (IRAs) for the 33 consultants in amounts equal to 4.3 percent of a consultant's gross salary. Effective March 1, 1986, DEQE provided dental insurance to all full-time consultants employed under these contracts.

The fringe benefit package should be considered excessive for two reasons. First, DEQE's granting of paid time-off to its consultants violates Administrative Bulletin 82-1, Section 4.083:

No contract with an individual for services compensated on the basis of a periodic rate shall provide for or permit compensation for any time, such as vacation time, sick time, or holidays, during which the contractor does not actually perform services under the contract.

Contrary to EOAF's regulation, DEQE authorized between 36 and 50 days off per year for each consultant, depending on his or her seniority. Second, DEQE's funding of the consultants' IRAs and dental insurance coverage represents a fringe benefit not available to regular state employees.

In our opinion, DEQE's overpayments to the 33 full-time consultants totaled approximately \$267,000. This amount represents the difference between DEQE's actual cost for these consultants' salaries and fringe benefits and our estimate of what those costs would have been had DEQE complied with Administrative Bulletin 82-1:

	<u>Actual Costs Incurred by DEQE</u>	<u>Projected Costs in Compliance with Regulations</u>
Full-time Salaries	\$1,251,047	\$1,113,432
Fringe Benefits	215,749	278,358 *
Less: Paid Leave	-	(192,067)**
Total Salary Costs	<u>\$1,466,796</u>	<u>\$1,199,723</u>
Add: Part-time Wages	65,845	65,845
Total Costs	<u>\$1,532,641</u>	<u>\$1,265,568</u>

* Represents 25 percent of authorized salaries in accordance with Administrative Bulletin 82-1, Section 4.076.

** Represents 13.8 percent of authorized salaries plus fringe benefits (\$1,113,432 + 278,358) in accordance with Administrative Bulletin 82-1, Section 4.083. The rate of 13.8 percent was derived by dividing the minimum number of paid leave days granted to these consultants (36) by the number of work days in one year (261).

As a result of these overpayments and DEQE's cost for the duplicative payroll service, we believe that DEQE's use of NEIWPCC as a fiscal conduit has cost the Commonwealth approximately \$386,000 in unnecessary expenditures.

In addition to these excessive expenditures, we found that DEQE had expended \$81,342 for purposes that appear contrary to the legislative intent of the "03" system:

- o DEQE purchased through NEIWPCC, \$58,716 worth of computers, desks, file cabinets, lamps, and office supplies. All of these items are located and used at DEQE's offices.
- o DEQE expended \$14,296 in travel costs for consultants to attend out-of-state conferences. In all, there were 37 trips to a variety of destinations including Washington, D.C.; Orlando, Florida; and Las Vegas, Nevada. The duration of these trips ranged from 1 to 8 days.
- o DEQE expended \$8,330 for various training classes attended by consultants. These classes included "Overcoming Writer's Block," "Introduction to Supervisory Skills," and "Lotus 1-2-3."

The purpose of the "03" subsidiary account, as envisioned by the Legislature, is to provide temporary, specialized expertise to state agencies. Therefore, we question spending "03" funds for the purchase of office equipment and supplies. Such purchases should be charged against subsidiary accounts "14" (Office and Administrative Expenses) and "15" (Equipment). Furthermore, the State Purchasing Agent routinely processes such purchases since the State Purchasing Agent maintains contracts with numerous vendors and can obtain office equipment and supplies at substantial discounts. By "spot purchasing" the items through the "03" account, DEQE failed to take advantage of these discounts.

We also question DEQE's sending consultants to national conferences. In our opinion, the Commonwealth's interests would be better served at national conferences by DEQE's sending state employees, whose relationship and responsibilities are more permanent in nature.

Finally, we question DEQE's paying for the training of consultants, who are presumed to already possess the requisite expertise.

Recommendations: DEQE should terminate its contracts with NEIWPC. This action would result in immediate cost savings equivalent to the fee charged by NEIWPC for its unnecessary payroll service. Individuals currently employed under these contracts should, upon DEQE's evaluation and review, be transferred to state-employee positions.

Auditee's Response: Officials at DEQE supported their use of NEIWPC and rejected our conclusions in the areas of compensation rates, equipment purchases, travel costs, and training. In consideration of the concerns that have been raised regarding consultant contracts with NEIWPC, DEQE officials stated that they have issued a directive (prior to receiving our draft report) specifying that no new contracts are to be written with this consultant.

Regarding compensation rates, DEQE responded: ". . . as a non-profit agency [NEIWPC] sets its own wage and fringe benefit package." DEQE maintains that it exerts no control over what this consultant pays its employees. They believe that, the rates paid to this consultants' employees, ". . . fall within the ball park of costs the state would have to assume for 02 employees or 03 positions." In support of this claim, DEQE presented an analysis of the cost to the state of a Grade 18 "02" employee. They conclude that "the cost to the state for a grade 18, 02 employee, is \$32,179." The cost for the same

employee under the present NEIWPCC arrangement would be \$30,465, and, as an individual "03," the same employee would cost \$29,857 according to DEQE officials.

Regarding the purchase of equipment, DEQE maintained that NEIWPCC purchased equipment under these contracts for use by NEIWPCC employees. DEQE officials state that "when equipment was purchased, an effort was made to secure the lowest possible price."

Officials stated, on the subject of travel costs, that "DEQE does not concur with the auditor's contention that [NEIWPCC] employees should not have traveled. Travel is a routine part of many jobs at DEQE whether the employee is an 01/02/03."

Finally, DEQE did not agree that training costs were inappropriate under this contract. Officials stated "the use of training to keep skills up to date whether the employee is an 01/02/03 is important. Skills and expertise must not be allowed to stagnate."

Auditor's Reply: We commend DEQE's decision to not issue new contracts to NEIWPCC. However, we do not concur with its arguments in support of the unnecessary contract costs.

During the course of our audit, we received documentary and testimonial evidence of DEQE's dominant role in the selecting and compensating of employees under these contracts. We reviewed memoranda from DEQE's Deputy Commissioner instructing NEIWPCC to hire specific individuals for specific functions at specific rates of pay. Additionally, NEIWPCC's Comptroller explained to us that he does not take personnel actions such as these without direction from DEQE officials.

We acknowledge DEQE's efforts to secure the lowest possible price when purchasing equipment. However, we maintain that the purchasing of office equipment and supplies is more appropriately and efficiently done through the procedures established by the State Purchasing Agent for this purpose.

We do not contend that routine travel reimbursement is improperly paid to consultants through these contracts. Rather, we believe that the 37 out-of-state trips paid for by DEQE through this contract represent extraordinary rather than routine travel. We believe that it is more beneficial for the state to send state employees whose responsibilities are more permanent in nature to these out-of-state conferences.

Finally, we do not believe that it is the taxpayers' responsibility to fund the training of consultants. Consultants are presumably hired so that the state may benefit from their already acquired expertise.

Again, we commend DEQE's decision to refrain from initiating any new contracts with NEIWPC. We believe the service was both expensive and unnecessary.

4. Inadequate Contract Management By Two State Agencies

Because both DPW and EOTC inadequately developed and managed contracts with two consultants, certain questionable costs were incurred. One consultant held three consultant contracts: two with EOTC and one with DPW. During the contract period, one of the individuals also served on the Massport Board of Directors. The other individual is currently working under his third consecutive contract with DPW.

These consultants were awarded multiple contracts although they consistently did not complete all of the tasks contractually assigned to them. Moreover, one of these consultants was paid for days worked when in fact he was out of state on unrelated business. The other consultant was incorporated as

a firm. This consultant was compensated at a rate of \$40 per hour, a rate that we believe to be excessive for an individual but which is within DPW's operating procedures for negotiating with a firm.

A. Inadequate Documentation of Job Performance by a Traffic Consultant at EOTC and DPW: During fiscal years 1984 and 1985, EOTC and DPW non-competitively awarded three consecutive "03" contracts, totalling \$74,000 to a traffic-engineering consultant. The first two contracts, totalling \$35,000, were awarded by EOTC and covered the 11-month period February 13, 1984 through December 31, 1984. Under these contracts, the consultant was required to review and make recommendations regarding parking policies, taxi and limousine operations, and problems of traffic congestion throughout the state. The third contract, totalling \$39,000, was awarded by DPW. This contract covered the 12-month period December 10, 1984 through December 9, 1985 and required that the consultant work with a team of traffic consultants (the Traffic Operations Problem-Solving [TOPS] unit), to identify the worst traffic and accident sites in the state and to recommend and design corrective actions. Our review of these three contracts revealed that the consultant (a) did not perform all of the services required under the terms of the contracts, (b) billed and was paid for time when he was out-of-state on unrelated business, and (c) was paid weekly despite conflicting time sheets or no time sheets at all.

In addition, because of EOTC's and DPW's poor contract management, we are unable to determine what services were rendered in return for the \$70,500 (of the total \$74,000) paid to this consultant.

a. Inadequate Documentation of Contract Services: Under the three contracts, the consultant was required to analyze specific traffic and parking problem sites throughout the state and to submit recommendations for corrective action. Our audit revealed that the consultant submitted no reports and

that the consultant did not document his daily activities. As a result, we could not determine what services the consultant provided to these agencies in return for the \$70,500 paid to him.

Under his EOTC contracts, the consultant was required to conduct six specific studies concerning various traffic and parking problems in the state. For instance, the consultant was required to "undertake a review and analysis of the worst traffic bottlenecks in Boston . . . identify the 10 worst . . . and develop a series of recommendations to ease the problems" The consultant, however, did not submit any reports detailing his analyses or recommendations.

In a written response to our audit, EOTC officials state that in the case of this consultant the "desired product was results, not reports." EOTC acknowledges that "when the consultant's scope of work was changed, an amended AF-4 and the contract reflecting the new scope of work should have been submitted." They maintain, however, that this "administrative oversight should not be construed to mean the consultant did not perform needed and necessary services."

EOTC's Undersecretary for Projects and Project Development, who was the consultant's immediate supervisor, acknowledged, during our audit, that the consultant did not perform all of his contract tasks. He stated, however, that the consultant's primary responsibility became the development of the new TOPS program that was later implemented in the Department of Public Works. As this project became a priority, the other contract tasks were abandoned. The Undersecretary also told us that the consultant provided no documentation (other than weekly time sheets) describing his activities under the contracts. Our review of these weekly time sheets revealed that from April 1984 through

December 1984, the time sheets were not reviewed and authorized by any EOTC official.

Under his DPW contract, the consultant was assigned to the five-person TOPS unit. The DPW contract required each unit member to perform any or all of several tasks. (The contract was identical in scope for each of the five consultants.) According to the AF-4 Form, this consultant's services were required because of a "shortage of traffic engineering operational specialists in the Department." We were told by the consultant's immediate supervisor that the consultant performed interagency liaison and coordination services rather than the other more technical tasks outlined in the contract. DPW's Director of the Bureau of Transportation Planning and Development told us that, as the immediate supervisor of this unit, he does not monitor individual member's daily activity nor time spent on the job. The Director told us that his function was to review final reports submitted by the unit as a whole. However, the Director stated that he instructed each member of the unit to maintain the necessary records detailing daily activities and time spent on the job in order to support their payments. Four of the five members adequately met this requirement, but the consultant who is the subject of our finding maintained no record other than his time sheet. We also reviewed the reports of the unit and again found that four of the five members had made significant contributions. We found no evidence, however, that the consultant in question had contributed to these products. Each of the 17 reports submitted by the unit were supported by progress reports, internal memoranda, and media articles. The name of the consultant in question did not appear in any of the reports, memoranda, or articles.

Subsequent to our audit field work, the consultant, at the request of DPW's Director of Administrative Services, prepared a summary of his DPW work.

This summary, dated June 14, 1986 and provided to us on September 29, 1986, indicates that the consultant performed two services under his DPW contract. The first involved his management of a public contest: "Tell Fred Where to Go." This contest was co-sponsored by DPW and the Patriot Ledger newspaper and asked citizens to suggest traffic improvements at specific South Shore locations. The consultant stated that he had spent 70 percent of his contract time on this project. The consultant did not describe or document any specific tasks that he performed in managing this contest, and we did not find him mentioned in our review of the contest entries and DPW responses.

The second service involved the consultant's holding discussions with personnel from the Metropolitan District Commission (MDC) in reference to establishing a formal link between TOPS and the MDC. The consultant stated that he had spent 20 percent of his contract time on this project. These discussions were not documented by the consultant. The consultant stated that he spent the remaining 10 percent of his time on other projects.

In response to our audit, DPW officials explained the absence of work products by stating that "the consultant in question had responsibilities that did not require him to produce technical engineering studies or reports." According to his supervisor, the consultant played "an active coordinating role" in both projects outlined in his summary. DPW also noted that the TOPS contract was intentionally written in a "generic format," i.e., without specific requirements for individual members. It was expected that each member of the unit would perform some, not all, of the required duties.

b. Consultant's Double-Billing Resulted in Overcompensation Totalling \$2,250: On December 10, 1984 the consultant began work under his 12-month contract with DPW and, accordingly, terminated his services at EOTC. For the remainder of December (three weeks) the consultant continued to submit time

sheets to EOTC indicating that he had worked 37.5 hours per week and was paid \$2,250. During this same 3-week period, the consultant also charged DPW for full-time work and was paid in full.

EOTC's Director of Financial Affairs informed the consultant of this error when he disbursed the check and instructed him to reimburse the overpayment. The consultant returned the \$2,250, as evidenced by a March 26, 1985 deposit with the State Treasurer--three months after the overpayment.

In response to our audit findings, EOTC attributed this double-payment to a "clumsy process," referring to the "03" consultant payroll system and the administration of the consultant's transfer from EOTC to DPW. EOTC further stated: "It should be noted that during the three weeks in question, the consultant was beginning work on the DPW implementation phase of the project. He was not aware of his actual EOTC termination date when he originally submitted the time sheets for the three weeks in question."

We acknowledge the inadequacies of the old "03" payroll process (e.g., payroll clerks were required to submit an estimate of consultant hours at the beginning of the month). However, we are questioning the consultant's submission of signed personal time records for the same period to both agencies.

c. Consultant Billed For Time While Out Of State: During the course of the three contracts, the consultant was a member of the Board of Directors for the Massachusetts Port Authority. On nine occasions the consultant was out of state on Massport business (e.g., attending conferences and meetings concerning Massport-related matters), yet under his EOTC and DPW contracts he charged a total of \$1,950 to the Commonwealth for 13 days of 7.5 hours each. For instance, in July 1984, the consultant attended a conference sponsored by the

National Organization To Insure a Sound-Controlled Environment (NOISE). According to a NOISE brochure, NOISES's mission is to "seek jet aircraft noise abatement."

Each of the nine trips is described below (based upon the consultant's travel expense vouchers submitted to Massport):

<u>Number Of Days</u>	<u>Destination</u>	<u>Purpose</u>	<u>"03" Contracts Agency</u>	<u>Charged Date(s)</u>
2	Denver	Attend NOISE Conven- tion	EOTC	7-26-84 to 7-27-84
1	Unknown*	Unknown*	DPW	2-05-85
4	New York	Boscom/Alitalia Air- line Project	DPW	2-25-85 to 2-28-85
1	New York	NOISE Regulations	DPW	4-19-85
1	New York	Airport Ground Trans- portation	DPW	5-02-85
1	New York	NOISE Regulations	DPW	5-22-85
1	Newark	Airport Ground Trans- portation	DPW	5-29-85
1	Washington, D.C.	Unknown*	DPW	6-04-85
1	New York	New York Port Authority	DPW	6-07-85

* The consultant's travel expense voucher did not include a destination and/or a purpose for these trips.

We do not believe that the consultant was fulfilling his "03" responsibilities while he was out of state on Massport business. The consultant's contracts with EOTC and DPW required that he perform various traffic and parking studies around the Commonwealth. The out-of-state conferences and meetings attended by the consultant dealt chiefly with airport-related matters. Also, these travel expenses were paid entirely by Massport. Massport's enabling legislation (Chapter 465 of the Acts of 1956) allows for the reimbursement of its

board members' travel expenses only "in the discharge of their official duties."

In responding to our draft audit report, officials at EOTC stated that "the consultant charged EOTC for work performed on two days while he was out of state on Massport business. When the auditors brought this matter to our attention, we notified the consultant who reimbursed EOTC for these two days." The officials went on to explain that "the consultant billed regularly for the state employee's work week of 37.5 hours, while often working hours far beyond that, due to his required attendance at EOTC, community or other outside meetings." A number of senior staff members are cited as being able to attest to the consultant's diligence, and "with this in mind," they explain, "less attention was paid to the usual precise recordkeeping required of EOTC consultants by either the consultant or the payroll department." The consultant's supervisor had "no doubt that the consultant put in more than the 37.5 hour work week that was approved."

DPW responded to the charge that this consultant billed for time while out of state by contacting the consultant and asking "that he review his billings and expense records for the days in question. "The consultant responded that his review had revealed the following: 'For the eleven days in question I invoiced the DPW for 7.5 hours per day, for a total of 82.5 hours, at \$20/hour for a total of \$1,650. However, on four of the eleven days, I, in fact, spent all or part of the day in the DPW office because of the flight schedules. . . Therefore, of the 82.5 hours in question, 18.5 were spent in the DPW office, for a total of 64.0 hours that were not, so that I will reimburse the DPW for 64.0 hours X \$20 = \$1,280 if that is satisfactory.'" In DPW's response the consultant argued "that his poor recordkeeping is not evidence of his failure

to perform work for the department on those days, but the consultant reimbursed the Department in order to remove any doubt."

d. Poor Contract Management Resulted in Conflicting and Inadequate Time Records: Our review disclosed that the consultant submitted conflicting time sheets for the week ended April 21, 1984. One time sheet indicates the consultant worked a total of 30 hours (4 days at 7.5 hours per day). The second time sheet indicates that he worked a total of 37.5 (4 days at 9 to 10.5 hours per day.) Responsible officials could not explain why two time sheets were submitted. The conflicting time records were not detected by EOTC, and the consultant was paid for 37.5 hours.

In another instance, we found that the consultant was paid a total of \$5,250 for 7 full-time (i.e., 37.5 hours) weeks, for which time records could not be found. The "03" payroll system regularly processed consultant payments without requiring authorizing time sheets. The consultant's contract required signed time records as a condition of payment:

No such payment shall be made unless and until the contractor has submitted, and the secretary has received, a requisition for payment for the contractor certifying that he has performed the work under the agreement.

Every such requisition of payment shall be signed by the contractor and shall be subject to the review and verification of, and shall be approved and countersigned by the secretary or his duly authorized representative or representatives.

EOTC's failure to monitor this consultant's time in compliance with the terms of his contracts represents a weakness in internal controls.

EOTC responded to the issue of conflicting and inadequate time records by stating that "for the 11-month period that the consultant worked for EOTC he performed his duties and submitted time sheets, indicating hours worked, on a regular basis. We are however, unable to locate time sheets for 7 weeks out

of the 11-month period." On the matter of conflicting time sheets, EOTC determined that the time sheet with 37.5 hours represented a corrected time sheet. "We are confident that the corrected time sheet represent[s] actual hours worked by the consultant." EOTC officials explained that their office should have voided the incorrect time sheet. They also stated that "our mislaying of the time sheets does not mean that the consultant violated his contract."

Recommendations: To correct the poor monitoring of consultant activities:

1. We recommend that EOTC and DPW establish policies and procedures to ensure that consultant contracts comply with Chapter 29, Section 29A, of the Massachusetts General Laws, by specifying the required duties each consultant is to perform. If it is determined that changes in the contract scope are necessary, the consultant's contract should be amended to reflect such changes.
2. We also recommend that these agencies institute internal controls within their consultant contracting procedures that would ensure that consultant's activities and time are adequately monitored. Such controls might include requiring consultants to submit progress reports detailing the work under the contract. These progress reports could then be compared to the terms of the contract in order to evaluate the consultant's performance. Additionally, consultant's time sheets and service billings should be reviewed and authorized prior to the processing of payments.

Auditee's Response: In responding to our recommendations, DPW stated:

This [first] recommendation is unnecessary as the Department has procedures in place relative to the implementation of these procedures and we do not consider the draft report to have made the case to the contrary. Since these issues [second recommendation] came to light, the commissioner has issued two notices, one on January 22, 1986 and the other on February 24, 1986, which put these recommendations in place.

In addition to the responses incorporated in the body of our findings, both EOTC and DPW responded to our draft report with unqualified support for the consultant in question. As stated by officials at DPW, "the consultant provided interagency/community liaison and coordination, as provided for in his contract with the Department." Furthermore, the consultant's specific duties did not require him to produce studies or reports. EOTC responded that, "despite [the consultant's] limited-term employment, and because of the

nature of his work assignments and general expertise in traffic planning, he was viewed as a valuable resource by the staff." When the "03" payroll system was replaced by PMIS, EOTC's contracts management benefitted from the attendant controls. As a result of our audit, DPW developed controls that standardized time and expense reporting and required increased documentation from all consultants.

Auditor's Reply: We acknowledge and support the steps taken by these agencies to improve their contract management. We believe that it is essential that contracts with consultants be written to specify duties and evaluation criteria. Contracts that are specific in scope combined with documentation such as regular progress reports provide the purchasing agency with the necessary tools to ensure that services purchased by taxpayers are actually provided.

B. Questionable Contract Performance by Consulting Maintenance Engineer at DPW: During September 1984, the Department of Public Works (DPW) awarded the first of three consecutive "03" contracts to a former 29-year DPW maintenance engineer. Each eight-month contract totalled \$35,000 and required the consultant to study DPW's highway maintenance activities. Our review of the first two contracts revealed that the consultant (a) did not complete the tasks assigned to him and (b) was overcompensated \$24,505 because of an excessive hourly rate. In our opinion, these problems could have been prevented, had DPW adequately monitored the development and management of these contracts.

a. Consultant Did Not Complete Contracted Work: The first contract required the consultant to conduct an in-depth study of the DPW's highway maintenance activities. The study consisted of seven* related tasks directed at identifying any inefficiencies that exist in current maintenance operations:

1. Review current contract procedures within each Maintenance Unit.

2. Review the General Laws which are applicable to highway-maintenance functions.
3. Review the process whereby permits are issued.
4. Develop inventory of equipment, review repair methods, and review work titles of personnel.
5. Review staffing, including titles and job descriptions of maintenance crews, and engineering and office personnel at the district and main offices.
6. Compare maintenance functions with other states, such as New Jersey.
7. Submit a final report that will contain recommendations for each of the categories included under the above tasks.

*An eighth task, the preparation of a "maintenance management study," was to be sub-contracted to a firm located in Virginia. This study was completed by the sub-contractor and submitted to DPW's Maintenance Division in January 1985.

During our audit, the DPW Maintenance Engineer (the consultant's immediate supervisor) stated that the consultant was unable to complete any of the tasks assigned to him during the course of the first eight-month contract. The consultant confirmed this and stated that the required work was too extensive to complete; nevertheless, DPW issued a "Certificate of Completion" indicating that all tasks had been completed.

Immediately upon the issuance of this certificate, DPW awarded this consultant a second eight-month \$35,000 contract that required that virtually the same tasks plus one optional task be performed. Several tasks were rewritten, and, as a result, they were somewhat less specific than those in the first contract. For instance, the fourth task (see above) no longer required the consultant to "develop" an equipment inventory but rather to "review" equipment used. The second contract expired in January 1986, and the consultant again had not completed the original tasks.

Upon the expiration of the second contract, DPW again extended the consultant's employment by awarding a third eight-month \$35,000 contract. The consultant is currently employed under this contract, which required nine tasks be performed: six of the original seven, the "optional" task, plus two new tasks. Again, the contract language was changed so that the tasks were significantly less specific. Of the nine tasks required in this third contract, four were to be performed only "as directed," two required the consultant's "assistance," and one was "optional." Only two of the nine tasks directly required the performance and completion of a specific project task by the consultant.

The DPW Maintenance Engineer told us that he had initially underestimated the extent of work to be performed under the first contract and consequently had worded the original contract much too ambitiously. He also told us that the consultant is utilized in the ongoing work of the Maintenance Division, taking him away from his contractual duties.

The consultant agreed with the Maintenance Engineer's assessment of the situation and told us that he would probably not finish the work during this third contract because of the complexity of the work and also because he is taken away from his contract work to lend his expertise to the department's general maintenance operations.

Auditee's Response: As part of its written response, DPW submitted a list of reports that the consultant submitted during his contracts, partially completing many of the tasks. DPW recognizes that all the tasks outlined in the consultant's scope of work were not completed under the consultant's original contract. They state that "this can be attributed to a number of factors. It appears that the original Scope of Work was overambitious and could not be completed in the time-frame outlined. This is in part due to the utilization of

the consultant's expertise on projects outside the scope of this contract. The Department acknowledges its administrative oversight in not formally amending the consultant's contract when this occurred." They further state that "the contributions of the consultant to the maintenance division far outweighed the cost of the three contracts."

Auditor's Reply: We recommend that DPW institute contract management procedures that ensure that consultant contracts have clear objectives and realistic time frames for the completion of objectives. Contracts should also include wording to require DPW's monitoring and evaluation of the consultant's performance with respect to the contract objectives.

b. Consultant Was Paid at an Excessive Rate: EOAF's Administrative Bulletin, Section 4.076, states: "Any service which corresponds substantially with the scope of duties of a position in the Commonwealth's classification plan may be compensated at a rate not exceeding twenty-five percent above Step 1 of the [state employee] salary schedule." The consultant provided services within the scope of a DPW associate civil engineer, yet he was paid at a rate of \$40 per hour. This rate exceeded the comparable classified rate plus 25 percent by \$20 per hour and consequently resulted in overpayments of \$24,505 under the two contracts.

The DPW Maintenance Engineer agreed that the consultant's services were within the scope of state positions. For example, the consultant reviewed DPW's methods and procedures for sub-contracting maintenance work (snow removal and grass cutting) on state highways. The Deputy Director said that reviews of this nature could have been performed by Maintenance Division employees. However, reductions in staffing have required the division to use consultants for much of DPW's ongoing work. We noted that DPW's AF-4 Form cited that there were no employees currently available to perform the needed work.

The state position most comparable in responsibility to the consultant's was that of Associate Civil Engineer (Job Group 26), the highest level engineer who is not necessarily a supervisor. An Associate Civil Engineer at Step 1 earned \$16.12 per hour at DPW during 1985. Multiplying this rate by EOAF's 125 percent factor results in a maximum allowable hourly rate of \$20.15. Comparing this rate to the actual rate of \$40 per hour paid to the consultant under the two contracts reveals overpayments of \$24,505 as shown in the table below.

	<u>Number of Hours Worked</u>	<u>Hourly Rate</u>	<u>Total Salary Payments</u>
Actual	1,234.5	\$40.00	\$49,380
Comparable Job Group			
Plus 25%	1,234.5	20.15	<u>24,875</u>
Excess			<u>\$24,505</u>

The Maintenance Engineer stated that the consultant, as a personal corporation, was entitled to \$40 per hour. He said the rate covered not only the consultant's wages but also his overhead expenses.

For several reasons, we maintain that the \$40 per hour rate was excessive. First, in accordance with the terms of the contracts, DPW provided for many of the consultant's overhead needs. For example, DPW provided office space and furnishings, clerical services, telephone, and printing services. Second, the consultant told us he incurred no additional overhead expenses under this contract except for corporate insurance and some typing which he explained were charged to another personal corporation. Since the consultant incurred no overhead expenses under these contracts and his services were within the scope of state positions, we believe that his compensation rate should have been based upon an hourly rate of \$20.15, in compliance with Section 4.076 of Administrative Bulletin 82-1.

Recommendation: We recommend that DPW evaluate its method for establishing this rate in order to ensure that future contract rates do not include unnecessary overhead costs.

Auditee's Response: In response to our draft report, DPW officials state: "The Auditors' report maintains that the consultant was paid at an excessive rate. This charge is incorrect. . . . This contract did not engage an individual for consulting services; it engaged a firm. For contracts with corporations the Department uses a formula which factors in an hourly rate, overhead, and profit. Applying this standard formula to the consultant's contract, one finds that this consultant did not receive \$40 an hour as maintained by the Auditors', but rather his rate was, as follows:

\$18.00	Hourly Rate
18.36	Overhead (101%)
3.64	Profit (10%)
<u>\$40.00</u>	

They further state that "the fact that the DPW provided the consultant with work space . . . does not mean the consultant did not incur overhead expenses. . . ."

Auditor's Reply: During the course of our audit, we requested the breakdown of overhead and profit costs related to this consultant's rate. The contract quoted only the compensation rate of \$40.00 per hour, and neither the consultant nor his supervisor was able to provide us with additional information. In fact, the consultant told us that he incurred no overhead expenses, and we found no evidence that would support the 101-percent overhead cost. It is not clear that the percentage in any way accurately represents actual overhead costs incurred.

5. Massport's Non-Compliance with Internal Policies Regarding Consultants

Contrary to its own internal policies, Massport allowed consultants to begin work without fully executed contracts. This practice was identified in 9 of the 37 contracts reviewed. These 9 contracts totalled \$1,168,519, and the consultants worked an average of 198 days without a contract. Consequently, we believe that Massport assumed unnecessary liabilities when it allowed consultants to begin work without fully executed contracts.

Massport's Procedures and Policies for Routine Agency Transactions and Emergency Requirements states that "consultants should begin work only under a fully executed contract." Massport's Assistant General Counsel told us, however, that this policy is not always adhered to. She stated that in some instances, such as emergencies or potential emergencies, it is necessary for consultants to begin work without a contract. This official also stated that having an executed contract before work begins is good form but that Massport values substance over form.

Emergency situations, we agree, may require that services be obtained prior to the execution of a written agreement. However, the services provided under the 9 contracts in question were routine in nature. For example, one firm began inspecting the Tobin Memorial Bridge 226 days prior to a contract being executed. This work is routinely performed once every three years. We found no documentation in Massport's files indicating an emergency situation.

The chart below details the services provided by the 9 consultants and the length of time they worked without a contract:

<u>Contract Number</u>	<u>Contract Amount</u>	<u>Service Rendered</u>	<u>Days Worked Without a Fully Executed Contract</u>
P-830	\$ 144,600	Engineering Study on Corrosion of Pier Pilings	635

<u>Contract Number</u>	<u>Contract Amount</u>	<u>Service Rendered</u>	<u>Days Worked Without a Fully Executed Contract</u>
G0537	\$ 20,000	Insurance/risk management analysis	365
G-407	352,300	Bridge inspection and ratings of Tobin Memorial Bridge	226
G-528	120,196	Soundproofing several parochial schools in East Boston	189
MD825525	43,380	Maintenance of equipment at Moran Terminal	163
1.221C	342,865	Design and inspection services, inbound roadway at Logan Airport	120
G-444	32,832	Maintenance of temperature control devices at the State Transportation Building	44
G-483	23,066	Produce a 4-to-8 minute videotape on Boston and Logan Airport	39
G-380	\$ 89,280	Rubbish removal-State Transportation Building	5
<u>\$1,168,519</u>		Average 198 days	

Without a written executed contract detailing the scope of work to be performed, Massport cannot effectively monitor and evaluate a consultant's performance. In addition, without such a contract, Massport is more vulnerable to disputes with consultants over project scope and terms of payment.

Finally, with a fully executed contract, Massport would be in a stronger position to take legal action against a consultant for a consultant's poor performance or the consultant's failure to meet federal and state regulations.

Recommendation: We recommend that Massport follow its own policies and procedures to ensure that consultants begin work only under a fully executed contract.

Auditee's Response: According to Massport officials, "the use of the word should [in its internal policy] indicates that the policy is not intended to be absolute." They also stated that "the practice has been that work should not begin until the contract is fully executed, but if operational needs require action, and the contract process has been initiated and approved by at least the appropriate department heads, the consultant may be given a notice to proceed, with appropriate qualifiers." Massport further stated that it has been revising its policy and procedures for the purpose of expediting its consultant approval process to minimize violations of this policy.

Auditor's Reply: In our opinion, the only appropriate reason for a consultant's beginning work before a contract is fully executed is that an emergency situation exists, and Massport's policy makes this provision.

CONCLUSION

If used properly, the "03" system could assist state agencies in acquiring temporary expertise for specific purposes and thus meet their legislative mandates and better serve the Commonwealth's taxpayers. However, as our audit has revealed, the "03" system has been operating in a manner not consistent with legislative intent. The following recommendations are intended to correct the inefficiencies in the "03" system and to ensure that taxpayers' money is spent more efficiently, more effectively, and more economically:

1. We recommend that the Governor and Legislature investigate the administration and control of the Commonwealth's "03" consultant system. In the interim, we recommend EOAF consider establishing a branch that would be solely responsible for the administration of the "03" account. This branch would be responsible for ensuring that agencies comply with EOAF regulations and that the "03" account is used for its intended purpose.
2. We also recommend that EOAF initiate a review of "03" consultants who are currently performing state-employee-type services. Such a review would be directed at transferring appropriate "03" consultants to state employee positions.
3. We recommend that the Commissioner of Administration undertake a review of existing "03" regulations concerning the competitive procurement of consultants. This review should be aimed at strengthening and clarifying the regulations in order to provide adequate guidelines for state agencies to follow and to establish procedures that will ensure the efficient use of taxpayers' money. At a minimum, this review should address the following procedural components:
 - Preparation of a request for proposals
 - Public advertisement of the request for proposals
 - Procedures for bidders' and proposers' conferences
 - Guidelines for establishing minority contractor incentives
 - Contract negotiation procedures
 - Sub-contracting procedures
 - Guidelines and procedures for the final selection of consultants
 - Procedures for agencies' documenting their reasons for not selecting low bidders

4. We recommend that policies and procedures be established on a state-wide basis to ensure strong internal controls within the "03" system. These policies and procedures should address the need to monitor consultant selection, service delivery, and compensation. In our opinion, the establishment of adequate monitoring procedures at the agency and executive office levels, as well as within EOAF, will better ensure the efficient and effective use of taxpayers' monies.

EOAF's Response: In responding to our draft report, the Commissioner of Administration and Finance disputed most of the issues we raised. However, he also made the following comments:

. . . I share your belief that the system can be better managed. In fact, since the start of this calendar year, I have undertaken several management initiatives and plan to institute more in the near future. These include:

1. Personally reviewing and approving, or disapproving, every 03 consultant contract proposed by agencies and approved by their appropriate Cabinet Secretary. In many instances, I have not approved the contracts.
2. Requiring, as a result of this personal review, that each agency prepare an "03 Spending Plan" for the 1987 fiscal year for my review and approval, prior to my authorizing any 03 contract. Again, in many instances, I have refused to authorize consulting contracts.
3. Initiating, again as a result of this personal review, a process during fiscal year 1987 for the conversion of a large number of individuals on 03 contracts to 02 positions. Moreover, in the fiscal year 1988 budget currently being prepared for submission in January, the Governor will request another large number of 02 positions to be used to convert individuals currently working as 03 consultants.
4. Issuing in the near future, as a result of a very detailed and systematic assessment of the 03 contracting system initiated by this office earlier this year, a complete revision of Administrative Bulletin 82-1, i.e., the regulations governing the contracting of 03 consultants by state agencies. These new regulations are being developed by a senior level Work Group chaired by my Chief Counsel that includes representation from the major state agencies which utilize 03 consultants. . . .
5. Establishing, again as a result of my on-going assessment of the 03 contract system, the position of Assistant Secretary for Contract Compliance within the Executive Office for Administration and Finance. This Assistant Secretary will report directly to me and be responsible for coordinating and monitoring all contracting activities of the Executive Department agencies under the purview of Administration and Finance. This Assistant Secretary, then, will

have responsibilities very similar to what the draft report proposes be done by "a branch within the Executive Office for Administration and Finance." In addition, the Assistant Secretary's responsibilities will include the coordination and monitoring of 07 purchase of service contracts and the administration of the small and minority business purchasing programs.

As the above steps clearly set forth, we have already undertaken specific initiatives in this area, including several which are recommended in the draft report, to improve the management of the 03 contracting system. . . .

We share a mutual goal--improving the management of the 03 system--and we have independently arrived at similar conclusions on specific steps toward that goal. Our combined support of these and other steps could chart a new and improved course for the 03 system.

Auditor's Reply: We believe that the measures outlined above will address most of the issues raised in our report. However, we wish to point out that these actions did not commence until several months after our audit began.

EXHIBIT IMassachusetts General Laws Chapter 29, Section 29A

29:29A. EMPLOYMENT OF CONSULTANTS.

Section 29A. The commissioner of administration shall make, and may from time to time amend, rules and regulations governing the use of consultants in all departments, offices, boards, agencies, commissions and institutions. Such rules and regulations shall establish, after recommendations by the personnel administrator, the rate of compensation of such services and shall provide for the prior approval by the said administrator of the rate for any such service for which no rate has previously been established by such regulation. Such rules and regulations shall be open to public inspection in the department of personnel administration, and copies thereof shall be available to any person upon request. Such rules and regulations shall not be subject to the provisions of chapter thirty A. Such rules and regulations shall also include, but need not be limited to the following requirements none of which shall be waived: (1) a request therefor on a form prescribed by the commissioner of administration specifically setting forth the need for such services; (2) the period of time for which the services are to be engaged or the scope of work to be done and such other information as shall be required to establish the maximum limit of the commonwealth's obligation for the services; (3) a written contract specifically setting forth the duties and responsibilities of the parties; (4) a resume setting forth the qualifications of the proposed consultant as they relate to the terms of the aforementioned contract; (5) a disclosure statement setting forth any other income derived by the proposed consultant from the commonwealth or any of its political subdivisions; (6) a statement setting forth the names and addresses of all persons with any interest in the said contract. No department, office, agency, board, commission or institution within any of the executive offices established by chapters six A and seven shall contract for the provisions of any such services without the prior written approval of such contract by the secretary having charge of such executive office. No payment shall be made to any consultant for any services provided prior to the date upon which the form requesting said services as required by clause (1) has been approved by the secretary having charge of such executive office and a copy of the same has been filed with the comptroller. As used in this section the word "consultant" shall mean any person who, as a nonemployee of the commonwealth, gives advice or service regarding matters in the field of his knowledge or training and whose compensation is payable from a subsidiary account coded under "03" in the expenditure code manual. No person employed by the commonwealth as a consultant so-called shall directly or indirectly supervise another temporary or permanent employee of the commonwealth. The commissioner of administration shall submit copies of said approved forms within thirty days after receipt to the house and senate committees on ways and means and the joint legislative committee on post audit and oversight of the general court.

EXHIBIT II

The Commonwealth of Massachusetts

House Bill No. 123

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT TO IMPROVE THE MANAGEMENT OF STATE OFFICE BUILDINGS.

Be it enacted by the Senate and House of Representative in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 40F of Chapter 7 of the General Laws, as appearing the 1984 Official Edition, is hereby amended by deleting the fifth paragraph and inserting in place thereof the following paragraph: --

The deputy commissioner shall assist in the preparation and shall approve of plans for the organization of all space within and around buildings and appurtenant structures used by state agencies, and shall assign the use of space within and around the state house, in accordance with the provisions of sections ten, sixteen A, and seventeen of chapter eighty; the John W. McCormack State Office Building; the Leverett Saltonstall State Office Building; the Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann Building; the Charles F. Hurley Building; the state transportation building; any real property acquired for the use of state agencies, the greater part of which is not needed by any one state agency; and any other real property assigned by law to the division of capital planning and operations.

SECTION 2. Section 6 of chapter 8 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by deleting the entire section and inserting in place thereof the following section: --

The superintendent shall have charge of the care and operation of the state house; the John W. McCormack State Office Building; the Leverett Saltonstall State Office Building; the Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann Building; the Charles F. Hurley Building; the building at 100 Nashua Street in the city of Boston; the state transportation building; all parking areas and grounds appurtenant to said buildings; and any other state properties as are designated by law. The superintendent shall see that all such properties are kept clean and in good order; shall take proper precautions against damage to such properties; and shall direct the making of all repairs and improvement therein. All executive and administrative departments and officers shall make requisition upon the superintendent for any such repairs or improvements.

EXHIBIT II (Continued)

The superintendent may, with the approval of the deputy commissioner of capital planning and operations, award contracts for the provision of building management services at one or more of the properties under his care. Said building management services may include operation of mechanical and electrical systems, cleaning and housekeeping, preventive maintenance, security, minor repairs, and similar services, but shall not include services for which contracts are subject to the provisions of section thirty-nine M of chapter thirty or section forty-four A of chapter one hundred and forty-nine. Every contract for building management services estimated to exceed five thousand dollars shall be awarded through the use of competitive sealed proposals in accordance with written selection procedures. Requests for such proposals shall be publicly advertised in a newspaper of general circulation in the vicinity of the property; in any periodical established by the secretary of state for the purpose of advertising such contract; and in other trade publications and periodicals as determined by the superintendent. Each such advertisement shall appear at least two weeks prior to the date established for opening of proposals. The superintendent may evaluate proposals on the basis of criteria in addition to cost; provided that all such criteria are set forth in the request for proposals, and provided further that if the superintendent awards the contract to an offeror who did not submit the lowest price, he shall explain the reasons for the award in writing, specifying in reasonable detail the basis for determining that the quality of services under the contract will not exceed the commonwealth's actual needs and that the quality of services offered in each lower priced proposal would not meet the commonwealth's actual needs. Each contract shall contain performance criteria. The superintendent shall, at least annually, prepare a written evaluation of each contractor's performance. Each contract shall be for a term of not more than five years, subject to appropriation, provided that the superintendent shall not solicit or award a contract for a term exceeding one year unless he has determined in writing that a contract term exceeding one year will result in significant cost savings to the commonwealth.

All building projects at properties under the care of the superintendent, the estimated cost of which exceed twenty-five thousand dollars and which involve structural or mechanical work, shall remain under the control and supervision of the division of capital planning and operations, in accordance with section forty B of chapter seven. The superintendent shall be deemed the using agency for the purposes of said projects.

The superintendent shall annually, on or before September first, submit to the joint committee on state administration a comprehensive report on the management and condition of all such properties. A copy of the report shall be provided to the inspector general.

EXHIBIT II (Continued)

SECTION 3. Section 9 of Chapter 8 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by deleting the section in its entirety.

SECTION 4. Section 1 of chapter 240 of the acts of 1984 is hereby amended by deleting paragraph(n) in its entirety.

SECTION 5. This act shall take effect on July 1, 1987.

EXHIBIT IIIMassport's Janitorial Services

Massport received 8 proposals to provide cleaning services at the State Transportation Building. John's Janitorial Service, Inc. (JJS) of Peabody, submitted the second highest proposal of \$605,181 and was awarded the contract by Massport.

Submitting the lowest qualified bid of \$419,396 was Pritchard Services, Inc. of East Boston. We believe that selecting Pritchard Services, Inc., which was fully qualified to provide the cleaning services, would have saved the Commonwealth \$185,785.

Pritchard Services, Inc. is an established company with over 45,000 employees in 20 different countries. The company currently cleans the Commonwealth's two main office buildings located in Government Center, Boston: the John J. McCormack and the Leverett Saltonstall State Office buildings. On a square-footage basis, both of these are comparable in size to the State Transportation Building. The Superintendent of BSOB, who is responsible for the management of these two buildings, told us that Pritchard Services has provided above-average services at the two locations. He stated that this firm could have maintained the State Transportation Building.

In a memorandum dated December 15, 1985, Massport gave its reasons for selecting John's Janitorial Service, Inc. Specifically, the memorandum states:

It is the staff's view that JJS will provide the most competent cleaning service for the State Transportation Building . . . in addition to being a minority business enterprise (MBE), JJS has represented to Massport that it will meet or exceed our minority and female work force composition goals.

Massport's first reason that JJS will provide the "most competent" cleaning service indicates, we believe, Massport's desire to obtain superior services while ignoring the cost effectiveness of such services. As such, Massport has

EXHIBIT III (Continued)

failed to weigh its personal preferences as tenant of the building against its fiscal responsibilities as manager. As a result, the Commonwealth had to expend unnecessarily \$185,785.

Regarding Massport's second reason, we recognize that setting and achieving affirmative action goals is an admirable and necessary objective. However, once again, a cost-benefit relationship must exist between such social goals and the cost of attaining them.

Additionally, in fairness to Pritchard as well as the other 6 firms that submitted proposals for this contract, Massport should have identified in its request for proposals (RFP) that the contract was targeted for minority businesses. The losing proposers expended time and money to respond to Massport's RFP, only to be rejected because they were unaware of Massport's selection criteria.

Officials at the State Office of Minority Business Assistance agreed that the proposers were misled by Massport's failure to properly advertise the contract. Since Massport's RFP did not target minority businesses for the award, the officials stated that all firms should have competed equally for the contract and the lowest qualified bidder should have been selected. The officials also believed that the award was unreasonable because the proposal submitted by JJS Inc. was 44 percent higher than that submitted by the lowest qualified bidder.

In our opinion, Massport should have awarded its cleaning-service contract to Pritchard Services, Inc. This company was fully qualified to provide the required janitorial services, and its selection would have saved the Commonwealth \$185,785.

EXHIBIT III (Continued)

Auditee's Response: In response to our draft audit report, Massport officials stated that:

- a. The negotiated contract price was \$588,210, which is \$16,971 less than the proposal price cited in the report;
- b. The report is correct in quoting the reasons for selecting John's from the 12-15-83 Massport memorandum as including "most competent cleaning service," "minority business enterprise," and ability to "meet or exceed our minority female work force composition goals." Contrary to the opinion expressed in the report, these elements of the proposal, along with cost and the quality and type of services, were critical for Massport to consider in order to comply with the standard established in the Management Services Contract and its own affirmative action policies and goals;
- c. The other buildings (John J. McCormack and Leverett Saltonstall) cited in the report and contacted by the auditors as reference for the lowest priced proposer, Pritchard Services, are not required to comply with the Class A standard under which Massport was charged to maintain and operate The Transportation Building.

Auditor's Reply: (a) Massport is correct in stating that the negotiated contract price for these services was \$588,210. However, Massport's response does not disclose that the contract with JJS was amended and that actual payments to JJS totalled \$726,792, which is \$307,396 (73 percent) higher than that proposed by Pritchard. We used proposal prices because they would allow us to review all of the bids submitted in response to Massport's RFP.

In addition, we found no evidence during the audit--nor could Massport provide any evidence in its response to our draft report--that Pritchard Services was not capable of providing the required cleaning services at the State Transportation Building. We believe that Massport did not adequately consider the proposal cost-difference (44 percent) when it awarded this contract.

EXHIBIT IVMassport's Security Services

Massport received 6 proposals for its building-security-service contract. Security Management Services Inc. (SMS) of Boston, which submitted the third highest fee proposal (\$478,296), was awarded the contract.

Massport's reasons for selecting Security Management Services Inc., are stated in the December 15, 1983 Massport memorandum:

It is the staff's determination based on interviews, subsequent reference checks and negotiations that SMS will provide superior security service at the State Transportation Building.

The company that submitted the lowest fee proposal, \$249,378, was Management Safeguards, Inc., also of Boston. Management Safeguards is an established firm of 24 years, which currently employs approximately 200 individuals. References listed on Management Safeguards', proposal included many well-known corporations such as General Motors, Mobil Oil, General Electric, the Yankee Atomic Electric Company, Filenes, Sears, Zayre, and Marshalls. We found no documentation supporting Massport's decision to reject this company's proposal.

We contacted two of the references listed on Management Safeguards' proposal: Zayre Corporation of Framingham and the Maine Medical Center of Portland, Maine. Officials from both of these companies told us that they have been "very satisfied" with Management Safeguards' performance. Zayre's Investigation Manager stated that Management Safeguards currently services Zayre's offices in New York, Boston, and Florida. She added that Management Safeguards has been employed by Zayre for over ten years and there has never been a problem. The Administrative Vice-President of the Maine Medical Center told us that Management Safeguards has been employed by his firm for over nine years.

EXHIBIT IV (Continued)

He stated that during this period, Management Safeguards has displayed a good problem-solving capability, has had excellent in-house supervision, and has been very responsive to the needs of the center.

In our opinion, Massport should have selected Management Safeguards, Inc. for this contract. The company is fully qualified based upon the references provided within its proposal. Furthermore, Management Safeguards, Inc. was willing to provide the services for \$228,918 less than Management Services, Inc. Once again, we believe that Massport sacrificed its fiscal responsibilities for what it believed were superior services.

Auditee's Response: In response to our comments on the awarding of this contract, Massport officials stated:

- Given the location of The Transportation Building (adjacent to the Combat Zone) and the public use contemplated in the night time hours (e.g., Theater District parking), the selection of the appropriate security company was the single most important decision in maintaining the established Class A standard for the building. As a result, criteria other than cost alone were considered in the decision as described in the 12-15-83 Massport memorandum;
- The report recommends that Massport should have selected the proposal with the lowest fee, Management Safeguards, Inc. However, the report does not appear to take into consideration the fact that MSI paid the lowest wages to employees. Higher wages and benefits to the security officers were a major concern in trying to establish a stable, loyal and competent work force to perform this critical function;
- In discussing MSI's references, the report does not include the fact that MSI had no experience providing security to any comparable building in the Boston area. In fact, most of MSI's experience is in the area of industrial, retail and institutional security;
- Security Management Services was selected based on an outstanding presentation, good references, relevant experience, and a clear understanding of the complex security needs of the building.

Auditor's Reply: We found no evidence during our audit that indicated that Massport felt that Management Safeguards, Inc. was not capable of providing the required "Class A" security services at the State Transportation Building.

EXHIBIT IV (Continued)

We believe that MSI's longevity in this industry--24 years--and its demonstrated ability to provide services to a highly diverse clientele, is overwhelming testimony to its ability to provide a stable, competent work force and a quality service at the State Transportation Building.

-113-

EXHIBIT VMassport's Window-Cleaning Services

Massport received four proposals to provide window-cleaning services at the State Transportation Building. Prout Industrial Cleaning, Inc. of Mattapan, which submitted the highest fee proposal of \$39,186, was awarded the contract.

Massport justified the selection of this company in the December 15, 1983 memorandum stating:

Based on the quality of the proposals submitted and on the strength of the references received the staff recommends that the contract be awarded to Prout Industrial Cleaning, Inc. a minority business enterprise.

We reviewed the four proposals and believe that Massport should have awarded the contract to Allbrite Cleaning, Inc. This company submitted the lowest bid of \$32,570, which, if selected, would have saved the Commonwealth \$6,616. Also, Allbrite Cleaning, Inc. received outstanding recommendations from Meredith and Green Management Co., and from the management of Logan Airport. Specifically, these references stated that Allbrite Cleaning, Inc. is a reputable and thorough company. Finally, there was no documentation in Massport's files indicating any problem that it had with Allbrite Cleaning's proposal or job qualifications.

If Massport's intention was to advance minority quotas through this contract, it should have informed the public that the contract was targeted for minority business. We found no documentation to indicate that Massport informed prospective bidders of its intention.

It should be noted that DCP0's May 1985 evaluation of the State Transportation Building's service contracts stated: ". . . window cleaning services by

EXHIBIT V (Continued)

Prout Industrial Cleanin, Inc. have been unsatisfactory in several respects: as to cleaning standards, scheduled frequency, and responsiveness to Building Management." Based upon this report and our review, Massport not only unnecessarily spent \$6,616 of taxpayers' dollars but did not even receive the quality of service that it had expected.

Auditee's Response: Massport stated that "Prout Industrial was awarded this contract based on the quality of their proposal and the strength of their references." Further, "Prout's status as a minority business enterprise served to enhance their proposal."

Auditor's Reply: As stated in the report, Allbrite Cleaning, Inc. provided Massport with outstanding recommendations. Allbrite Cleaning, Inc. is also a minority business enterprise.

EXHIBIT VI

The following information excerpted from Administrative Bulletin 82-1 provides state agencies with guidelines for selecting consultants:

4.11 Selection of Contractor

- 4.111 The process for selection of contractors to perform services for the Commonwealth shall be as competitive as practicable under the circumstances.
- 4.112 No contract with an organization to perform nonprofessional services classified under object codes 201 through 219 (other than time service, appraisers, sheriffs, constables, military service, witness fees, workers and blind consignors) in the subsidiary account code manual, and having a maximum obligation over \$500.00 may be awarded except pursuant to a competitive bidding procedure involving the solicitation of bids by publicly advertising in the Goods and Services Bulletin published by the Secretary of State and by posting in a conspicuous public place or newspaper of general circulation or widely distributed trade journal.
- 4.113 No original contract for professional services classified under object codes 121 through 149 (except for object code 130) having a maximum obligation of \$40,000 or more may be awarded except pursuant to a selection procedure involving either the public advertisement in the Goods and Services Bulletin published by the Secretary of State and the solicitation of formal written proposals from at least three qualified vendors, or selection from a list of prequalified contractors, established under a prequalification procedure approved in writing by the Commissioner of Administration. This requirement shall not apply to modification or renewal of such contracts.
- 4.114 The selection procedures prescribed in the foregoing paragraphs may be waived by the Commissioner of Administration:
 - (a) There is only one vendor qualified to perform the work in view of either the uniquely specialized nature of the service or the monopolistic structure of the market (including any case in which the contractor is a public utility or public agency);
 - (b) The service is necessary to respond to an emergency involving an immediate threat to the health or safety of persons or to the protection of property.

AGENCY HEADS

Frank T. Keefe, Secretary
Executive Office for Administration and Finance

Ellen M. O'Connor, Comptroller
State Comptroller's Division

Tunney Lee, Deputy Commissioner*
Division of Capital Planning and Operations

Armand W. LeMay, Superintendent*
Bureau of State Office Buildings

Frederick P. Salvucci, Secretary
Executive Office of Transportation and Construction

Robert T. Tierney, Commissioner
Department of Public Works

David W. Davis, Executive Director
Massachusetts Port Authority

Philip W. Johnston, Secretary
Executive Office of Human Services

Bailus Walker, Jr., Commissioner
Department of Public Health

James S. Hoyte, Secretary
Executive Office of Environmental Affairs

S. Russell Sylva, Commissioner
Department of Environmental Quality Engineering

*Subsequent to our audit field work, Mr. LeMay and Mr. Lee left state service.

